Supreme Court, U.S.
FILED

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No. _____

In The
SUPREME COURT OF THE UNITED STATES
October Term, 1999

In re Robert V. Steinhilber,

Petitioner,

v.

Michael S. McFarland, et al.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

Robert V. Steinhilber,
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9088

QUESTIONS PRESENTED

I. WHETHER A DISTRICT COURT HAS THE AUTHORITY TO MAKE "FINDINGS OF FACTS" PRIOR TO HOLDING A PURPORTED SEVENTH AMENDMENT TRIAL BY JURY, BIND THE JURY TO THOSE "FACTS", AND PROHIBIT A PARTY FROM PRESENTING EVIDENCE AND ARGUMENT CONTRADICTING THOSE "FACTS".

II. WHETHER THE REMEDIES SOUGHT BY THE PLAINTIFFS IN A CAUSE WHICH WAS FILED BY THEM AND ACCEPTED BY THE DISTRICT COURT PURSUANT TO A FEDERAL STATUTE WERE EQUITABLE IN NATURE SUCH AS TO DISQUALIFY DEFENDANTS FROM RECEIVING A SEVENTH AMENDMENT JURY TRIAL WHEN PLAINTIFFS HAD ASKED FOR THE SPECIFIC REMEDIES PROVIDED FOR IN THE STATUTE AND "FOR SUCH OTHER RIGHTS OR REMEDIES EXISTING AT LAW OR IN EQUITY AS THE COURT MAY DEEM REASONABLE AND APPROPRIATE".

III. WHETHER A DEFENDANT IN A CLASS ACTION LAWSUIT FILED BY PLAINTIFFS

AND ACCEPTED BY THE DISTRICT COURT PURSUANT TO THE INTERSTATE LAND SALES FULL DISCLOSURE ACT AS IT EXISTED FROM ITS INITIAL EFFECTIVE DATE OF APRIL 28, 1969, THROUGH DECEMBER 23, 1971, WHEREIN PLAINTIFFS HAD ASKED FOR THE SPECIFIC REMEDIES PROVIDED FOR IN THE STATUTE AND "FOR SUCH OTHER RIGHTS OR REMEDIES EXISTING AT LAW OR IN EQUITY AS THE COURT MAY DEEM REASONABLE AND APPROPRIATE", IS ENTITLED TO A SEVENTH AMENDMENT JURY DETERMINATION OF THE AMOUNT OF DAMAGES.

LIST OF PARTIES

Robert V. Steinhilber, Petitioner; Johnita F. Steinhilber, Co-defendant; Winnebago South, Inc., a Missouri Corporation, Co-defendant; Michael S. & Donna C. McFarland, Roger F. & Cherly Morgan, Norman R. & Phillis A. Cates, Wayne E. & Annabell Laslay, Richard A. & Bonnie L. LaPointe, Glen G. & Opal Pittman, G. H. & Harriett L. Ricker, Orson A. & Glenna M. Rau, Gary & Carolyn Sue Spears, Paul & Juanita L. Schafer, Robert J. & Anna E. Schumacher, Christ & Sophia Skiroitis, S. N. & Irene P. Whitcanack, Arthur & Kathleen Zago, Respondents.

CORPORATE DISCLOSURE

There are no parent corporations involved, and there are no publicly held companies involved, only the privately held corporation, Winnebago South, Inc.

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OPINIONS BELOW

The Opinion of the Eighth Circuit panel is recited on App. 1.

The Order of the Clerk of the Eighth Circuit panel denying rehearing is recited on App. 2.

The District Court's "Judgment In A Civil Case" stating part of the "Judgment" was based upon "Jury Verdict" and part on "Decision by Court" and stating the "facts" it found prior to jury trial in regard to Petitioner's wife, which the Court instructed the jury were binding upon them, and about which the Court prohibited Petitioner from contradicting and presenting evidence or argument to the jury, is recited on App. 3. (Page 1 only, which states all pertinent parts of "Judgment", is recited.)

JURISDICTION

The Judgment of the Court of Appeals for the Eighth Circuit was entered on August 11, 1999. A timely Petition for Rehearing was filed and the Order denying the Petition was entered September 16, 1999. Jurisdiction of this Court is invoked under 28 U.S.C. Sections 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The SEVENTH AMENDMENT to the UNITED STATES CONSTITUTION is involved. It states:

> "In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law."

Title XIV, Public Law 90-448, Laws Of 90th Congress - 2nd Session, is also involved in this case. It was the initial "Interstate Land Sales Full Disclosure Act" (ILSA) and became effective April 28, 1969. It differs materially from subsequent amendments. It was subsequently identified as 15 U.S.C. §§ 1701-1720, and both designations are used in this Petition. The District Court referred to both designations on occasion.

Section 1402(4)/1701(4) states:

> " 'developer' means any person who, directly or indirectly, sells or leases, or offers to sell or lease, or advertises for sale or lease any lots in a subdivision;"

Section 1402(5)/1701(5) states:

> " 'agent' means any person who represents, or acts for or on behalf of, a developer in selling or leasing, or offering to sell or lease, any lot or lots in a subdivision; but shall not include an attorney at law whose representation of another person consists solely of rendering legal services."

(There is no provision for what the District Court described as a "fraudulent profit maker" in its findings of facts in the initial ILSA Law.)

§ 1410/1709 is entitled 'CIVIL LIABILITIES".

§ 1410(e)/1709(e) states:

> "In no case shall the amount recoverable under this section exceed the sum of the purchase price of the lot, the reasonable cost of improvements, and reasonable court costs."

Section 1420(a)/1719(a) states:

> "The district courts of the United States . . . . shall have jurisdiction of offenses and violations under this title . . . . . "

STATEMENT OF THE CASE

Petitioner was CEO and majority stockholder in Winnebago South, Inc. (WSI), a Missouri Corporation engaged in developing a residential lake subdivision known as "Winnebago South" because it adjoined an initial Lake Winnebago Subdivision to the north. On December 23, 1971, Respondents filed a class action lawsuit against WSI, Petitioner, his wife (JFS), Grandview Bank, et al., claiming they had violated the existing Interstate Land Sales Full Disclosure Act (ILSA), and asking for a jury trial.

Respondents prosecuted the action on an occasional basis only; it had no merit. At one time Plaintiffs' lead attorney stated his law firm had filed the case to gain experience in class action lawsuits, which were then (1971) becoming popular with attorneys. On June 30, 1983, the case was dismissed for lack of prosecution, but it was subsequently reinstated. The present District Court Judge is the third judge to preside over the case; he was assigned the case on July 25, 1991.

At the time this lawsuit was filed, WSI was not delinquent in any way, shape, or form, i.e., not in regard to financial or development obligations. Respondents alleged omission of information on the disclosure documents required under the Act, and fear of mishandling of

lot purchase payments. They asked for and received appointment of a receiver, though no evidence was ever produced to substantiate their allegations. In fact, not a single allegation of any wrongdoing was ever supported!

More specifically, in each of their 3 Complaints, Respondents claimed District Court jurisdiction "under the Interstate Land Sales Act (the Act) 15 U.S.C. §§1701 -1720". They prayed the District Court for judgment on behalf of the class "pursuant to 15 U.S.C. (§1709(a) and (b) and 15 U.S.C. §1713" and "for such other rights or remedies existing at law or in equity as (the) Court may deem reasonable and appropriate."

The District Court accepted the case as a class action lawsuit under the ILSA, and even dismissed all claims involving lot sales which took place before the ILSA became effective (April 28, 1969).

After the present Judge took jurisdiction, he held what were at the time described as hearings, but which were later, in pretrial conferences, characterized as trials. Only Petitioner and JFS were involved in the "hearings".

Although the Judge was obviously reluctant to empanel a jury, and at times stated he would empanel an "advisory jury", he finally, when confronted with JFS filing a Petition for a Writ of Mandamus to the Eighth

Circuit Court of Appeals, acknowledged that Petitioner, JFS, and Grandview Bank (Bank) were entitled to a "Seventh Amendment" jury trial, and a jury trial "of sorts" took place. (Petitioner will not, for purposes of this Petition, recite the numerous ways in which he was denied a full, fair, and impartial jury trial. Some of of those are listed in Petitioner's Appellate Brief to the to the Eighth Circuit Court.)

Prior to the start of the jury trial, the Court issued partial summary judgments against Petitioner, JFS, and WSI, wherein certain "facts" critical to their cases had been predetermined by the Judge. The Judgment against WSI was final so far as the jury was concerned, and they were not further involved in the jury trial. Petitioner and JFS were told by the Judge that under severe penalty they were not to introduce any evidence or argument to the contrary of those "facts" which had been predeter mined by the Court - that the jury would be told those "facts" had been determined by another tribunal in another proceeding - and that they, the jury, were bound by those "facts" and could not inquire into them.

These predetermined "facts" were to the effect that Petitioner was guilty of "fraud" and "conspiracy with Winnebago South, Inc." to defraud lot purchasers. (At the time, Petitioner owned 100% of WSI. The Plain-

tiffs had argued and the Court had accepted that WSI was the alter-ego of Petitioner. Thus he was accused of conspiring with himself.) And, these predetermined "facts" held that JFS was an "agent" of developer WSI, a "developer" of Winnebago South after April 23, 1971, and a "fraudulent profit maker for purposes of ILSA at all times after 2/6/69, when she conveyed the Williams Farm to WSI." (There is no mention of a "fraudulent profit maker" in the ILSA involved in this case, which is the initial ILSA.)

Even though Grandview Bank (the Bank) was not involved in the "hearings"/"trials" used as the basis for the Court to predetermine "facts", it too was restricted in regard to presenting evidence or argument contrary to the predetermined "facts", but not to the extent as were Petitioner and JFS, and the Instructions to the jury for the Bank did not bind the jury to the predetermined "facts" Included in the charges of fraud and misrepresentation against the Bank was the charge of conspiring with Petitioner, JFS and WSI to defraud lot purchasers. The jury found for Grandview Bank on all charges.

In regard to Petitioner and JFS, on the only charge which the predetermined "facts" allowed the jury to decide, that being whether JFS was guilty of conspir-

acy, they found for JFS. (This Verdict finding JFS innocent of conspiracy was omitted from the District Court Judgment, and a Motion to correct so that the record to the Eighth Circuit would be correct was denied. (Correction was also desired so that others who might read the public record would know.)

Although in the Order of the District Court entering Judgment the Court stated: "the dfts. had a 7th Amendment right to a jury trial" (and a jury trial "of sorts" was held), in the unpublished Opinion of the Eighth Circuit Court, the panel evidently was under the misapprehension that there had been no jury trial, to-wit:

> "We find that the Steinhilbers were not denied their right to a jury trial in district court, as the remedies sought and granted were equitable in nature."

In the second sentence of its two-sentence Opinion, the Court stated:

> "We are unable to review other claims raised by the Steinhilbers because they have not submitted necessary transcripts".

There were several thousand pages of transcripts in the Record of the District Court, plus important Court statements/entries, plus Court Deputy minute sheets, plus references to critical pleadings, which Record the Eighth Circuit Court was to use as the basis for its review of the pro se appeals (according to its own rules and statements in accepting the pro se appeals).

Thus, with a two-sentence Opinion, the first sentence of which is questionable, and the second sentence of which is erroneous, the Eighth Circuit Court of Appeals affirmed the District Court handling of this 28 year old case.

Petitioner has no honorable recourse but to file this Petition with the United States Supreme Court, doing so Pro Se because he is almost 74 years old and his social security benefits provide his only income.

It has been said that a judicial system can be accurately measured by how it treats the least of the litigants who come before it.

REASONS FOR GRANTING WRIT

Make no mistake about it, this case represents an attack by Respondents' Counsel, the District Court, and the Eighth Circuit Court of Appeals, on the Seventh Amendment, as the Supreme Court has interpreted it in Beacon Theatres v. Westover, 359 U. S. 500 (1959), Dairy Queen v. Wood, 369 U. S. 469 (1962), Ross v. Bernhard, 396 U.S. 531, and more recently in a unanimous decision in March, 1998, in Feltner v. Columbia Pictures Television, Inc., # 96-1728.

If successful, the proponents of this case will have provided many future litigants with a procedure by which their opposing parties, who would otherwise be entitled to a Seventh Amendment jury trial, will be denied such a trial. In this day of the World-Wide-Web/E-mail and the Internet, it matters little that the opinion of the Eighth Circuit will not be published.

This case represents an attempt to circumvent the rights of litigants to a Seventh Amendment jury trial. By not granting this Writ the Supreme Court would be providing the means by which the district courts could do away jury trials in many cases, which is perhaps the reason why some would support the District Court and Eighth Circuit Court handling of the case. It is common knowl-

ege that there are those who favor doing away with all civil case juries.

All three of the Reasons For Granting Writ set forth in the Table of Contents of this Petition are applicable in this case.

The Eighth Circuit Court held: "the Steinhilbers were not denied their right to a jury trial in the District Court, as the remedies sought and granted against them were equitable in nature."

Contrary to what appears to be a misunderstanding of the procedural facts, there was a jury trial "of sorts". And, if "the remedies sought and granted" were equitable in nature", then, according to the Court, there was no need for any jury trial whatsoever. Finally, the District Court itself announced that Petitioner, et al., were entitled to a "Seventh Amendment" jury trial.

Although the Seventh Amendment to the United States Constitution has already been quoted under the heading "Constitutional And Statutory Provisions Involved" in this Petition, inasmuch as it, and its interpretations by this Supreme Court, have thus far been ignored, first by the District Court and then by the Eighth Circuit Court, it bears repeating, to-wit:

> "In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States than according to the rules of the common law." (Emphasis added.)

The use of the term "common law" in the Amendment reflected the division of the English and United States legal systems into separate law and equity jurisdictions. Cases in courts of law generally were tried to a jury, while in cases in equity there was no right to a jury. In the federal court system, the courts had jurisdiction in both law and equity, but there were distinct procedures for law and distinct procedures for equity. These included the use or nonuse of a jury.

Adoption of the Federal Rules of Civil Procedure in 1938 merged law and equjity into a civil jurisdiction and established uniform rules of procedure. After the Rules, legal and equitable causes of action were joined in a single action. This presented difficulty in determining whether, in an action, there was a Constitutional right to a jury trial. This difficulty was resolved by the United States Supreme Court in Beacon Theatres v. Westover,

359 U.S. 500 (1959). The Court stressed the fundamental nature of the jury trial and the need to protect it against diminution through resort to equitable principles.

In Beacon, the Court held that a district court judge erred when he tried all issues himself in an action in in which plaintiff sought a declaratory judgment and an injunction barring the defendant from instituting an antitrust action against it, and the defendant had filed a counterclaim alleging violation of the antitrust laws and asking for treble damages. The equitable claims had been filed first and the law counterclaims claims had involved allegations common to the equitable claims. Subsequent jury trial of these issues would probably be precluded by collateral estoppel. The Supreme Court ruled that it did not matter that the equitable claims had been filed first, that "only under the most imperative circumstances which in view of the flexible procedures of Federal Rules we cannot now anticipate, can the right to a jury trial of legal issues be lost through prior determination of equitable claims."

Three years later, in Dairy Queen v. Wood, 369 U. S. 469 (1962), where the plaintiff sought several types of relief (an injunction and an accounting for damages), the Court held that even though a claim for legal relief was incidential to the equitable relief sought, the Seventh

Amendment required that the issues pertaining to that legal relief be tried before a jury - that legal claims must be tried before equitable ones and before a jury if the litigant so wished.

In 1970, in Ross v. Bernhard, 396 U.S. 531, the Court further held that the right to a jury trial depends on the nature of the issue to be tried rather the procedural framework in which it is raised. The case involved a stockholder derivative action, which the Court agreed has always been a suit in equity. The Court stated, however, that although the stockholder's standing to sue for a corporation was an equitable issue, the corporation's claim asserted by the stockholder may be either equitable or legal. The Court held that if the claim being asserted by the stockholder was legal in nature, it should be heard before a jury.

In the Feltner case, supra, the Supreme Court unanimously came down on the side of preserving a jury trial. Rule 38, Federal Rules of Civil Procedure, states:

> "The right of trial by jury as declared by the Seventh Amendment to the Constitution or as given by a statute of the United States shall be preserved to the parties inviolate."

In Tull v. United States, 481 U.S. 412, the Supreme Court held the Seventh Amendment grants a right to a jury trial on all issues relating to liability for civil penalties under the Clean Water Act.

As noted on page 3 of this Petition, the ILSA assigns adjudication under the Act to federal district courts. As can be noted by the District Court's own Order, as indicated by entry # 520 on Docket Sheet # 95, the District Court itself ruled that Petitioner, et al., "had a 7th Amendment right to a jury trial". (See App. for quote.)

In 1990, in Brownlee v. Yellow Freight System, Inc., 921 F.2d 745, the Eighth Circuit Court of Appeals stated:

> "Where legal and equitable claims are joined in the same complaint, legal claims should be tried first to the jury and facts decided by the jury will be conclusively established as between the parties under the doctrine of collateral estoppel."

Their conclusion was that the jury's role as fact finders must be preserved.

Respondents have claimed that Petitioner, WSI, JFS, and the Bank were involved in a conspiracy to defraud

lot purchasers, that they used a scheme to do so, and that, among other fraudulent things, made misrepresentations to lot purchasers. The Supreme Court has decided that a claim involving allegations of conspiracy to defraud cannot be maintained in equity. Curriden v. Middleton, 232 U.S. 633 (1914). In that case, the prayer asked for was similar to the relief sought by Respondents in this case, i.e., plaintiffs sought "a decree that the defendants shall make due restitution (of his property) to the complainant by paying to him the amounts of dollars by him paid out as aforesaid." 232 U.S. at 636.

In keeping with the Curriden decision, the 6th Circuit Court of Appeals, in 1970, reversed the district court for failing to grant a jury trial in an action for conspiracy to defraud. National Union Electric Corporation v. Wilson, 434 F.2d 986 (6th Cir. 1970).

The Supreme Court has held that defendants have a right to jury trial in an action for misrepresentation because misrepresentation is similar to the common law action of deceit, which calls for a jury trial. Buzard v. Houston, 119 U.S. 347 (1886). In that case, similar to the present case, plaintiffs sued to 1) rescind the assignment of a contract, 2) cancel their obligation to pay defendant, 3) recover sums paid to defendant, and 4) recover $10,000 in damages. The Supreme Court held that

plaintiffs had an adequate remedy at law and as such, "the plaintiff must proceed at law because the defendant has a constitutional right to a trial by jury."

In this present case, by claiming to change the remedies sought to what has traditionally been considered an equitable claim, the District Court Judge granted Respondents what the Eighth Circuit Court claimed to be equitable relief only, and the rights of Petitioner and JFS to a Seventh Amendment jury trial have been interpreted as being non-existent. What was an action based upon the ILSA, wherein Respondents asked for a judgment on behalf of the class "pursuant to 15 U.S.C. (§1709 (a) and (b) and 15 U.S.C.§1713", and "for such other rights or remedies existing at law or in equity as (the) Court may deem reasonable and appropriate.", has been interpreted as being strictly an equitable action for which there is no Seventh Amendment right to a jury trial.

The remedy actually requested and pursued by Respondents in this case should be evaluated rather than the misnomer they and the District Court have placed upon the relief in order to characterize it as mere equitable relief. The Respondents and the District Court have engaged in misleading labels.

A transcript of the District Court proceedings will

show that the District Court Judge instigated the entire equitable relief only "scenario", even providing Respondents' Counsel with the actual statements to make for the record.

Although Petitioner does not have the ability to present a truly in-depth analysis and a list of authorities in support of his cause, he believes the foregoing is sufficient to show that in regard to "QUESTION PRESENTED, I", a District Court does not have the authority to make "findings of facts" prior to holding a purported Seventh Amendment trial by jury, bind the jury to those "facts", and prohibit a party from presenting evidence and argument contradicting those "facts".

And, in regard to "QUESTIONS PRESENTED, II", Petitioner believes the foregoing is sufficient to show that the facts of this case, including the remedies sought by Respondents and thus far granted them by the District Court, do not warrant a ruling that the proceedings were entirely equitable in nature and that Petitioner, et al., were not entitled to a Seventh Amendment jury trial. (This Supreme Court is reminded that the District Court ruled that they were entitled to a Seventh Amendment jury trial.)

Finally, in regard to the "QUESTIONS PRESENTED",

and "III" therein, Petitioner believes the foregoing is sufficient to show that under the facts in this case, and especially in view of the 9-0 decision of the Court in Feltner, he is entitled to a Seventh Amendment jury trial in the event of the necessity for determining an amount of damages, if any, to Respondents.

In regard to the Supreme Court's criteria for granting a Writ of Certiorari, as set forth in its Rules, Petitioner believes the foregoing shows that this case meets all three criteria. Concerning the first criteria, with the exception of the Eighth Circuit Court in this case, all of the various United States Circuit Courts of Appeal adhere to the Beacon, Dairy Queen, Ross, et al., Feltner, tradition of preserving Seventh Amendment jury trials regardless of to what extent/degree an action might be traditionally equitable in nature.

The Eighth Circuit Court of Appeals has so departed from the accepted and usual course of judicial proceedings, and sanctioned such a departure by a lower court, as to call for an exercise of this Supreme Court's supervisory power. Petitioner believes it constitutes adventurism for the purpose of "paving the way" for doing away with many, if not all, jury trials in civil cases.

By proceeding as they have, the Eighth Circuit Court

of Appeals and the District Court have, in effect, decided an important federal question in a way that conflicts with the spirit, if not the letter, of relevant decisions of the Supreme Court. At the least, whether the Opinion of the Eighth Circuit Court is published or not, especially in this day and age of the World-Wide-Web/E-mail and the Internet, they are attempting to create an exception to the strong tradition of the Supreme Court to preserve Seventh Amendment jury trial rights.

Both the District Court and the Eighth Circuit Court have completely ignored the pleadings of both Petitioner and JFS in regard to Beacon, et al., that is, they have not even mentioned the cases even though they have been cited over and over again. Without so stating, in effect, in its Opinion, the Eighth Circuit Court has said this case is an exception to the Beacon, et al., cases in regard to Seventh Amendment jury rights. Petitioner likens the Beacon, et al., cases to the 800 pound gorilla that is in the room but that nobody talks about.

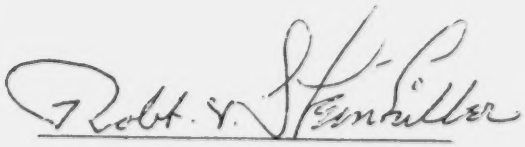
In attempting to make an exception to the Beacon, et al., rulings by the Supreme Court, first the District Court, and then the Eighth Circuit Court, should have addressed the matter of those cases, and how this case was different. Petitioner believes that when any court ignores existing laws or cases that are relevant to the

case at hand, especially when they have been specifically and frequently called to the court's attention, they are, at the least, departing from the usual course of judicial proceedings, and perhaps, acting in conflict with higher court case law, statutory law, and common law.

CONCLUSION

Petitioner believes the Supreme Court has been correct in holding fast to the spirit of this nation's traditional belief in the preservation of Seventh Amendment jury rights. He believes that, like freedom itself, the price in doing so is eternal vigilance, and that this case calls for the recognition and exercise of that eternal vigilance toward the preservation of Seventh Amendment jury trial rights. Petitioner asks this Supreme Court to show its continued and determined interest in preserving Seventh Amendment jury rights by granting his Petition For A Writ of Certiorari to the Eighth Circuit Court Of Appeals.

Respectfully submitted,



ROBERT V. STEINHILBER
Pro Se

CERTIFICATE OF SERVICE

I hereby certify that three true copies of the foregoing Petition For Writ Of Certiorari and attached Appendix were sent First Class U. S. Mail on the date shown as Notary's Acknowledgement to Thomas E. Ruzicka, Esq. and Kenneth C. Jones, Esq., sole Counsel for Respondents, at 130 N. Cherry, P.O. Box 550, Olathe, Kansas 66051, tele. (913) 782-2350, and three true copies were served on the person of Johnita F. Steinhilber, Co-defendant, sole remaining party, at 9209 N. W. 9th Place, Plantation, Florida 33324, tele. (954) 475-0430 on the same date.

I declare under penalty of perjury that the statements in the foregoing Certificate Of Service are true and correct.

Robert V. Steinhilber, Pro Se
9209 N.W. 9th Place
Plantation, Florida 33324
(954) 475-0430

Executed and Acknowledged by Notary on Nov. 10, 1999.

(Seal)

HENRY R. CARLSON NOTARY PUBLIC STATE OF FLORIDA
My Comm. Expires
No. CC 000000

10/27/2003

Notary Public

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UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 97-3535WMKC	*	
Michael S. McFarland, et al.,	*	
Appellees,	*	Appeal from the
	*	United States District
vs.	*	Court for the Western
	*	District of Missouri
Robert V. Steinhilber,	*	
Appellant.	*	

Submitted: August 6, 1999

Filed: August 11, 1999

Before McMILLIAN, RICHARD S. ARNOLD, and HANSEN, Circuit Judges.

PER CURIAM.

Robert V. Steinhilber and Johnita F. Steinhilber appeal from the final judgment entered in the District Court[1]

[1] The Honorable D. Brook Bartlett, Chief Judge, United States District Court for the Western District of Missouri.

for the Western District of Missouri, as well as the denial of several pre-trial and post-trial motions, following a jury verdict in this class action brought against them under the Interstate Land Sales Full Disclosure Act (ILSA), 15 U. S.C. § 1703 et seq. For the reasons discussed below, we affirm the judgment of the district court.

We find that the Steinhilbers were not denied their right to a jury in the district court, as the remedies sought and granted against them were equitable in nature. See Kerr v. Charles F. Vatterott & Co., No. 98-1677, 199 WL 493996, at *5 (8th Cir. July 12, 1999); Tri-State Hotels, Inc. v. FDIC, 79 F.3d 707, 715 (8th Cir. 1996). We are unable to review other claims raised by the Steinhilbers because they have not submitted necessary transcripts, see Fed.R.App.P. 10(b)(2); Schmid v. United Bhd. of Carpenters, 827 F.2d 384, 386 (8th Cir. 1987)(per curiam), cert. denied, 484 U.S. 1071 (1988), and this court will not weigh the credibility of witnesses, see United States v. Big D Enterprises, Inc.. No. 98-2861, 1999 WL 493114, at *4 (8th Cir. July 9, 1999.

A true copy.

Attest:

Clerk, U.S. Court Of Appeals,
Eighth Circuit.

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 97-3535WMKC	*	
Michael S. McFarland, et al.,	*	
Appellees,	*	Appeal from the
	*	United States District
vs.	*	Court for the Western
	*	District of Missouri
Robert V. Steinhilber,	*	
Appellant.	*	

Appellant's petition for rehearing has been considered by the Court and is denied.
(5193-010199)

September 16, 1999

Order Entered at the Direction of the Court:
S/S Michael E. Gans
Clerk, U.S. Court of Appeals, Eighth Circuit

App. 3

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

JUDGMENT IN A CIVIL CASE

MICHAEL S. MCFARLAND, et al.,)
Plaintiff (s),)
)
v..) NO. 19967-CV-W-9
)
WINNEBAGO SOUTH, INC., et al.,)
Defendant (s))

X Jury Verdict. This action came before this Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

X Decision by Court. This action came to trial or or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

____ This action has come before the Court as a briefed matter and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that 1) Plaintiffs' motion for partial summary judgment is GRANTED; and 2) as a matter of law, Johnita Steinhilber was an "agent"

of developer WSI until 11/7/69, when Sales Management Co. No longer acted as a sales agent for lots in Winnebago South; 3) as a matter of law, Johnita Steinhilber was a developer of Winnebago South after 4/23/71; and 4) as a matter of law, Johnita Steinhilber was a "fraudulent profit maker" for purposes of the ILSA at all time after 2/6/69, when she conveyed the Williams Farm to WSI. (Order entered ll/3/95).

IT IS ORDERED AND ADJUDGED that 1) Plaintiffs' motion for summary judgment against Defendant Winnebago, Inc. is GRANTED; 2) As a matter of law, Winnebago South, Inc. Is a developer for purposes of the ILSA; 3) As a matter of law, Winnebago South, Inc. sold lots by means of a statement of record that did not comply with Sec. 1707; and 4) as a matter of law, Winnebago South, Inc. violated 15: 1709 (b) (2). (Order entered 11/9/95).

VERDICT A - on plaintiff's claim that, in connection with offering to sell or selling lots in Winnebago South after 4/28/69, defendant Robert V. Steinhilber used a scheme to defraud plaintiffs, under Instruction 15, 23, the jury, finds in favor of plaintiffs.

VERDICT B - on plaintiff's claim that, in connection with the sale of lots in Winnebago South after

4/28/69, defendant Robert V. Steinhilber engaged in a practice or course of business that operated as a fraud on plaintiffs, under Instruction 18, we, the jury, find in favor of plaintiffs.

VERDICT C - on plaintiffs' claim that, in connection with offering to sell or selling lots in Winnebago South after 4/28/69, defendant Robert V. Steinhilber obtained money or property by using a misrepresentation of a material fact upon which a plaintiff relied in deciding to purchase a lot, under Instruction 21, we, the jury, find in favor or (sic) plaintiffs.

VERDICT D - on plaintiffs' claim that, in connection with the sale of lots in Winnebago South after 4/28/69, defendant Robert V. Steinhilber used a Property Report that contained an untrue statement of material fact or used a Property Report that omitted to state a material fact, under Instruction 24, we, the jury, find in favor of plaintiffs.

VERDICT E - on plaintiffs' claim that defendant Robert V. Steinhilber was involved in a conspiracy with Winnebago South, Inc. To sell lots in Winnebago South after 4/28/69, using a Property Report that contained an untrue statement of material or using a Property Report that omitted to state a material fact, under Instruction

29, we, the jury, find in favor of plaintiffs.

VERDICT F - on plaintiffs' claim that, in connection with offering to sell or selling lots in Winnebago South after 4/28/69, defendant Johnita F. Steinhilber used a scheme to defraud plaintiffs, under Instruction 34, 23, the jury, find in favor of plaintiffs.

VERDICT G - on plaintiffs' claim that, in connection with the sale of lots in Winnebago South after 4/28/69, defendant Johnita F. Steinhilber engaged in a transaction, practice or course of business that operated as a fraud on plaintiffs, under Instruction 38, we, the jury, find in favor of plaintiffs.

VERDICT H - on plaintiffs' claim that, in connection with offering to sell or selling lots in Winnebago South after 4/28/69, defendant Johnita F. Steinhilber obtained money or property by using a Statement of Record or Property Report that contained a misrepresentation of a material fact upon which a plaintiff relied in deciding to purchase a lot, under Instruction 42, we, the jury, find in favor of plaintiffs.

VERDICT I - on plaintiff's claim that, in connection with the sale of lots in Winnebago South after 4/28/69, defendant Johnita F. Steinhilber used a Property Report

that contained an untrue statement of material fact or used a Property Report that omitted to state a material fact, under Instruction 46, we, the jury, find in favor of plaintiffs.

(Petitioner note: "VERDICT J - on plaintiffs clsim (sic) that dft Johnita F. Steinhilber was involved in a conspiracy with Winnebago South, Inc. to sell lots in Winnebago South after 4/28/69, using a Property Report that contained an untrue statement of material fact or using Property Report that omitted to state a material fact, under Instruction 51, we, the jury, find in favor of dft. Johnita F. Steinhilber." OMITTED FROM JUDGMENT. Motion to Correct denied. Doc. Sheet p. 93.)

VERDICT KK - on plaintiffs' claim that, in connection with offering to sell or selling lots in Winnebago South after 4/28/69, dft Grandview Bank used a scheme to defraud plaintiffs, under Instruction 101, we, the jury, find in favor of Grandview Bank.

VERDICT LL - on plaintiffs' claim that, in connection with the sale of lots in Winnebago South after 4/28/69, dft Grandview Bank engaged in a transaction, practice or course of business that operated as a fraud on plaintiffs, under Instruction 104, we, the jury, find in favor of dft Grandview Bank.

VERDICT MM - on plaintiffs' claim that, in connection with offering to sell or selling lots in Winnebago South after 4/28/69, defendant Grandview Bank obtained money or property by using a Statement of Record or Property Report that contaianed a misrepresentation of a meterial fact upon which a plaintiff relied in deciding to purchase a lot, under Instruction 107, we, the jury, find in favor of defendant Grandview Bank.

VERDICT NN - on plaintiffs' claim that, in connection with the sale of lots in Winnebago South after 4/28/69, defendant Grandview Bank used a Property Report that contained an untrue statement of material fact or used a Property Report that omitted to state a material fact, under Instruction 110, we, the jury, find in favor of defendant Grandview Bank.

VERDICT OO - on plaintiffs' claim that defendant Grandview Bank was involved in a conspiracy with Winnebago South, Inc., to sell lots in Winnebago South after 4/28/69, using a Property Report that contained an untrue statement of material fact or using a Property Report that omitted to state a material fact, under Instruction 115, we, the jury find in favor of defendant Grandview Bank. (Verdicts were issued by the Jury on 2/13/96)

GENERAL RELIEF GRANTED AND PROCEDURES FOR ADDITIONAL SUBSEQUENT REMEDIES - 1) Defendants Winnebago South, Inc. ("WSI"), Robert V. Steinhilber and Johnita F. Steinhilber, and each of them, shall make a full and complete accounting to the Court, within 30 days of the date of this order and decree, of all money and/or property (including notes or any rights thereunder) received by any of them, or their agents, assignees or transferees:

a) from each member of the class with respect to the purchase or ownership of a lot in the Subdivision (regardless of whether in the form of a deposit, down payment, cash payment, principal or interest payment, credit life insurance premiums, easement or dock assignment, maintenance fee, or homes association dues payment);

b) from any other person or entity in connection with the purchase, sale, transfer, assignment, loan, pledge or hypothecation of any note or other evidence of indebtedness received from any member of the class in connection with the sale of any lot in the subdivision; and

c) from any other defendant, which relates in any manner to the activities or operations of Winnebago Soutk, Inc., including, but not limited to: salaries; consulting fees; director's fees; dividends; commissions; draws; personal, living, travel or "study" expenses; loan

payments; note payments; lot release fees; reserved account deposits; withdrawals, and/or earnings; or the proceeds from the purchase, sale, transfer, assignment, loan, pledge or hypothecation of any property not otherwise accounted for in response to subparagraph B.

2) Defendants Robert Steinhilber, Johnita Steinhilber and Winnebago South, Inc., ("WSI"), and each of them, shall immediately deliver to the duly appointed Receiver for WSI any and all monies, property and any other thing of value received, directly or indirectly, from any and all members of the plaintiff class, and a constructive trust is hereby impsed upon any such monies, property or thing of value, or the proceeds thereof, if in any defendant's possession.

3) Any contracts executed between plaintiff class members and Winnebago Soutk, Inc., dated between the dates of September l, 1968 and December 21, 1971, are hereby rescinded, cancelled, and held for naught except:

a) Contract executed by Gilbert L. and Ellen D. Worley for the purchase of Lot A-19.

b) Contract executed to Melvin and Sandra T. Sehorn for the purchase of Lot A-112.

c) Contract executed by W. Rupert and DeEsta Ramsay for the purchase of Lot A-21.

d) Contract executed by Nott S. and Ruby G. Meloy for the purchase of Lot A-37.

e) Contract executed by Charles J. and June Hebert for the purchase of Lot A-172.

f) Contract executed by Richard A. and Emma L. Evans for the purchase of Lot A-38, dated December 1, 1968.

g) Contract executed by Roger G. and Violet L. Slusher for the purchase of Lot A-36.

h) Contract executed by Mary E. Stiles for the purchase of Lot A-34, dated March 7, 1969.

Any person in possession of the original of any such contracts for sale, not otherwise excluded from the terms of this Order, shall surrender them immediately to the Receiver to be marked "cancelled" and returned to the lot purchaser.

4) Any notes and/or deeds of trust given; by any one to Winnebago South, Inc., or its designated trustee,

dated between the dates September 1, 1968 and December 21, 1971, are hereby rescinded, cancelled and held for naught except:

a) Note dated September 29, 1968, given by Nott S. and Ruby G.. Meloy.

b) Note dated December 1, 1968, given by Richard A. and Emma L. Evans.

5) Any person in possession of the original of any of said notes and/or deeds of trust shall immediately return any and all notes and/or deeds of trust to the Receiver to be marked "cancelled" pursuant to further order of the Court.

6) Any transfer, assignment, gift, sale, negotiation, pledge, or hypothecation of any note, or deed of trust obtained from any class member is hereafter prohibted and enjoined.

7) Any deed conveying title to any lot in Winnebago South, Inc. pursuant to any sales transaction taking place between the dates of September 1, 1968 and December 21, 1971 are hereby rescinded and cancelled except:

a) Deed given to Gilbert L. and Ellen D. Worley, dated

February 14, 1969, conveying Lot A-19.

b) Deed given to Melvin and Sandra T. Sehorn, dated April 16, 1969, conveying Lot A-112.

c) Deed given to W. Rupert and DeEsta Ramslay, dated November 26, 1968, conveying Lot A-21.

d) Deed given to Nott S. and Ruby G. Meloy, dated March 11, 1969, conveying Lot A-37.

e) Deed given to Charles J. and June Hebert, dated February 14, 1969, conveying Lot A-172.

f) Deed given to Richard A. and Emma L. Evans, dated March 11, 1969, conveying Lot A-38.

g) Deed given to Roger G. and Violet L. Slusher, dated December 7, 1968, conveying Lot A-36.

h) Deed given to Mary E. Stiles, dated March 7, 1969, conveying Lot A-34.

i) Deed to David L. Gibson, dated June 6, 1971, conveying Lot B-15.

j) Deed given to David L. Gibson, dated August 16,

1971, conveying Lot B-18.

k) Deed given to Elvin S. Douglas, Jr., dated August 4, 1969, conveying Lot D-31.

l) Deed given to Robert W. Spangler, dated August 4, 1969, conveying Lot D-32.

m) Deed given to Marvin L. and Sauna Rue Bonner, dated May 12, 1971, conveying Lot D-48.

8) Pursuant to Fed. R. Civ. P. 70, title to each of the lots identified in ¶ 7 is hereby conveyed to WSI.

9 In exchange for the rescission of each lot sale, and the cancellation of each of the instruments described herein, each member of the class shall be entitled to restitution of a proportionate share of the amounts paid in exchange for their lot(s). Each class member is hereby granted an equitable lien on the proceeds of the sale of any assets of WSI in an amount which shall be determined by further order of the Court.

10) Robert L. Jackson, Jr., as Receiver for WSI, is hereby authorized and directed to undertake the following tasks for the purpose of preparing the real estate comprising the Winnebago South Subdivision for sale:

a) to make all reasonable efforts to obtain clear title, or the right thereto, to as many lots or parcels of land as reasonably possible within the Winnebago South Subdivision, with the ultimate goal to created the largest possible tract of land to be marketed for sale and/or ultimately sold, subject to prior Court order approving any such sales transactions;

b) to develop a plan for the marketing and sale of the Winnebago South Subdivision real property in such fashion as will maxiumize the net cash money available to satisfy the class members' claims against WSI;

c) to undertake any and all efforts which he shall determine to be appropriate to negotiate a contract for the sale of the Winnebago South real property, which contract shall be made expressly contingent upon the approval of this Court;

d) to submit to the Court any final contract which he has been able to negotiate for the sale of the Winnebago South real estate;

e) to hold and invest at interest the proceeds derived from such sale or disposition, after payment of debts, costs and expenses of administration as the Court may determine to be appropriate; and

f) to distribute such net proceeds as further ordered by the Court.

Pursuant to Fed. R. Civ. P. 54(b), the Court determines that, except with respect to those matters upon which this Memorandum and Order expressly reserves ruling and determination, there is no just reason for delay and therefore directs entry of judgment as to all claims and issues in this litigation with respect to WSI, Robert Steinhilber and Johnita Steinhilber, not expressly reserved herein, including, but not limited to the following:

1) The jury verdict determining the liability of defendants Robert V. Steinhilber and Johnita F. Steinhilber.

2) Order of July 19, 1994 binding the defendants to the stipulations contained in the June 30, 1981 Pretrial Brief of the Parties.

3) Order of September 13, 1994, disallowing claims of Johnita F. Steinhilber and Robert V. Steinhilber and canceling note and deed of trust.

4) Order of November 3, 1995 granting plaintiffs' Motion for Partial Summary Judgment Against Johnita

Steinhilber.

5) Order of November 9, 1995 granting plaintiffs' Motion for Partial Summary Judgment Against Winnebago South, Inc.
(Order entered March 14, 1997)

March 14, 1997
Date

R. F. Connor
Clerk

K. M. Swain
Deputy Clerk

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(INSTRUCTION TO JURY.)

"INSTRUCTION NO. BBB

It has already been determined that:

1) Johnita Steinhilber was a "fraudulent profit maker" at all times after February 6, 1969;

2) Johnita Steinmhilber was an "agent" of developer Winnebago South, Inc. until November 7, 1969; and

3) Johnita Steinhilber was a "developer" of the Lake Winnebago South subdivision after April 23, 1971.

You need not determine these matters and should take these matters as conclusively established."

(Petitioner's Note: Petition and JFS were not allowed to present evidence or argument or contradict or even mention these "facts" to the jury, under penalty of severe sanctions. Even so, these "facts" were still not supported by any evidence presented by Respondents, and were strongly and frequently contradicted to Court alone. Further, there is no provision in the initial ILSA which was in effect during period covered in this case for a so-called "fraudulent profit maker".)

(Petitioner's Note: Set forth below are the prayers for relief in the three Complaints filed by Respondents:)

INITIAL COMPLAINT:

Count I

WHEREFORE, plaintiffs pray this Court for judgment on their behalf and on behalf of all persons similarly situated, pursurant to 15 U.S.C. § 1709(a) and (b) and 15 U.S.C. § 1713, and that they recover such damages as shall represent the difference between the amounts paid for the lots aforesaid and the value thereof as of the time this suit was filed, or such amounts as they each shall have paid for such lots at the time of judgment, whichever shall be lesser; and further, pray adjustment of their rights and obligations under any deed or deeds of trust filed and recorded heretofore in favor of the trustee of defendant Winnebago South, Inc., and in favor of the trustee of defendant Winnebago South, Inc., and for an order of this Court

restraining and enjoining said defendants from foreclosing upon properties purchased by defendants or other persons similarly situated, and restraining and enjoining defendants from assigning or transferring any notes, deeds of trust, or other instruments evidencing indebtedness or security interests, to any holder or holders in due course; and further pray for such other rights or remedies existing at law or in equity as this Court may deem reasonable and appropriate.

Count II

WHEREFORE, plaintiffs pray this Court require defendants and each of them to show cause why this Court should not immediately enter its Orders:

(1) Restraining and enjoining defendants and each of them from collecting further payments or assessnents from plaintiffs, and all other purchasers similarly situated; from applying funds already collected from such persons or

otherwise obtained in connection with the development of Lake Winnebago Retirement Village Subdivision for any purpose or purposes other than developing and providing the improvements and recreational facilities defendants represented would be developed and provided; and from dissipating or removing any such funds from the jurisdiction of this Court.

(2) Appointing a receiver to receive and take charge of all purchase monies and maintenance funds heretofore collected by defendants, or any of them, from plaintiffs and other persons similarly situated, and of all proceeds of such said monies, and all such monies as this Court may hereafter direct or permit to be paid; and authorizing such receiver to make no disburesements from such monies received by him other than for purposes of taking such steps to provide the aforesaid improvements and recreational facilities as the Court may from time

to time approve and direct.

(3) Compelling defendants and each of them to account to plaintiffs and to the Court and, if a receiver is appointed, to such receiver, for all purchase monies and maintenance funds heretofore paid by plaintiffs and other persons similarly situated, and for all funds otherwise obtained in connection with the development of Lake Winnebago Retirement Subdivision, and for all proceeds of such monies and things of value held in lieu thereof.

(4) Adjudging and declaring plaintiffs and all other persons similarly situaated are entitled to recission of their contracts of purchase for subdivision lots and of all obligations and commitments to any defendant undertaken in connection therewith, and ordering all monies paid in connection therewith to be returned.

Count III

WHEREFORE, plaintiffs pray this Court for judgment in the full sum paid by them and other persons similarly situated under contracts for the purchase of lots in the Retirement Village and as assessments by the Home Owners Association, for punitive damages in the sum of One Million Dollars, and for such other relief and remedies as the Court may deem reasonable and appropriate.

SECOND AMENDED COMPLAINT:

Count I

WHEREFORE, plaintiffs pray this Court for judgment on their behalf and on behalf of all persons similarly situated, pursuant to 15 U.S.C. §1709(a) and (b) and 15 U. S.C. §1713, and that they recover such damages as shall represent the difference between the amounts paid for the lots aforesaid and the value thereof as of the time this suit was filed, or such amounts

as they each shall have paid for such lots at the time of judgment, whichever shall be lesser and further, pray adjustment of their rights and obligations under any deed or deeds of trust filed and recorded heretofore in favor of the trustee of defendant Winnebago South, Inc., and for an Order of this Court restraining and enjoining said defendants from foreclosing upon properties purchased by defendants or other persons similarly situated, and restraining and enjoining defendants from assigning or transferring any notes, deeds of trust, or other instruments evidencing indebtedness or security inte;rests, to any holder or holders in due course; and further pray for such other rights or remedies existing at law or in equity as this Court may deem reasonable and appropriate.

Count II

WHEREFORE, plaintiffs pray this Court require defendants and each of them to show cause why this Court should not immediately enter its Orders:

(1) Restraining and enjoining defendants and each of them from collecting further payments or assessments from plaintiffs, and all other purchasers similarly situated; from applying funds already collected from such persons or otherwise obtained in connection with the development of Lake Winnebago Retirement Subdivision for any purpose or purposes other than developing and providing the improvements and recreational facilities defendants represented would be developed and provided; and from dissapating or removing any such funds from the jurisdiction of this Court.

(2) Appointing a receiver to receive and take charge of all purchase monies and maintenance funds heretofore collected by defendants, or any of them, from plaintiffs and other persons similarly situated, and of all proceeds of such monies, and all such monies as this Court may hereafter direct or permit to be paid; and authorizing such receiver to make no disbursements from such monies received by him other

than for purposes of taking such steps to provide the aforesaid improvements and recreational facilities as the Court may from time to time approve and direct.

(3) Compelling defendants and each of them to account to plaintiffs and to the Court and, if a receiver is appointed, to such receiver, for all purchase monies and maintenance funds heretofore paid by plaintiffs and other persons similarly situated, and for all funds otherwise obtained in connection with the development of Lake Winnebago Subdivision, and for all proceeds of such monies and things of value held in lieu thereof.

(4) Adjudging and declaring plaintiffs and all other persons similarly situated are entitled to rescission of their contracts of purchase for subdivision lots and of all obligations and commitments to any defendant undertaken in connection therewith, and ordering all monies paid in connection therewith to

be returned.

Count III

WHEREFORE, plaintiffs pray this Court for judgment in the full sum paid by them and other personhs similarly situated under contract for the purchase of lots in the Retirement Village and as assessment by the Home Owners Association, for punitive damages in the sum of One Million Dollars, and for such other relief and remedies as the Court may deem reasonable and appropriate.

Count IV

WHEREFORE, plaintiffs pray this Court for judgment on their behalf and on behalf of all persons similarly situated against said added defendants and all other defendants, directing rescission of all contracts of purchase of lots in the Retirement Village and of all obligations and commitments to added defendants in connection there-

with, return of all sums paid in connection therewith, and appointment of a temporary receiver to collect, receive and hold all payments now or hereafter paid as installments by plaintiffs on their purchase money notes, and restraining and enjoining holders of such notes, including the added defendants, from assigning negotiating or transferring the subject notes, deeds of trust, or other instruments evidencing or securing indebtedness arising from the purchase or agreement to purchase lots in the Subdivision.

THIRD AMENDED COMPLAINT:

Count I

WHEREFORE, plaintiffs pray this Court for judgment on their behalf and on behalf of all persons similarly situated, pursuant to 15 U.S.C. §1713, and that they recover such damages as shall represent the difference between the amounts paid for the lots aforesaid and

the value thereof as of the time this suit was filed, or such amounts as they each shall have paid for such lots at the time of judgment, whichever shall be the lesser; and further, pray adjustment of their rights and obligations under any deed or deeds of trust filed and recorded heretofore in favor of the trustee of defendant Winnebago South, Inc., and for an Order of this Court restraining and enjoining said defendants from foreclosing upon properties purchased by defendants (sic) or other persons similarly situated, and restraining and enjoining defendants from assigning or transferring any notes, deeds of trust, or other instruments evidencing indebtedness or security interests, to any holder or holders in due course; and further pray for such other rights or remedies existing at law or in equity as this Court may deem reasonable and appropriate.

Count II

WHEREFORE, plaintiffs pray this Court require defendants and each of them to show cause why this Court should not immediately enter its Orders:

(1) Restraining and enjoining defendants and each of them from collecting further payments or assessments from plaintiffs, and all other purchasers similarly situated from applying funds already collected from such persons or otherwise obtained in connection with the development of Lake Winnebago Retirement Subdivision for any purpose or purposes other than developing and providing the improvements and recreational facilities defendants represented would be developed and provided; and from dissapating or removing any such funds from the jurisdiction of this Court.

(2) Appointing a receiver to receiver and take charge of all purchase monies and maintenance funds heretofore collected by defendants, or any of them,

from plaintiffs and other persons similarly situated, and of all proceeds of such monies, and all such monies as this Court may hereafter direct or permit to be paid; and authorizing such receiver to make no disbursements from such monies received by him other than for purposes of taking such steps to provide the aforesaid improvements and recreational facilities as the Court may from time to time approve and direct.

(3) Compelling defendants and each of them to account to plaintiffs and to the Court, and, if a receiver is appointed, to such receiver, for all purchase monies and maintenance funds heretofore paid by plaintiffs and other persons similarly situated, and for all funds otherwise obtained in connection with the development of Lake Winnebago Retirement Subdivision Subdivision, and for all proceeds of such monies and things of value held in lieu thereof.

(4) Adjudging and declaring plaintiffs and all other persons similarly situated

are entitled to rescission of their contracts of purchase for subdivision lots and of all obligations and commitments to any defendant undertaken in connection therewith, and ordering all monies paid in connection therewith to be returned.

Count III

WHEREFORE, plaintiffs pray this Court for judgment in the full sum paid by them and other persons similarly situated under contracts for the purchase of lots in the Retirement Village land as assessments by the Home Owners Association, for punitive damages in the sum of One Million Dollars, and for such other relief and remedies as the Court may deem reasonable and appropriate.

Count IV

WHEREFORE, plaintiffs pray this Court for judgment on their behalf and on behalf of all persons similarly situ-

ated against the said added defendants and all other defendants, directing and rescission of all contracts of purchase of lots in the Retirement Village and of all obligations and commitments to added defendants in connection therewith, return of all sums paid in connection therewith, and appointment of a temporary receiver to collect, receive and hold all payments now or hereafter paid as monthly installments by plaintiffs on their purchase money notes, and restraining and enjoining holders of such notes, including the added defendants, from assigning, negotiating or transferring the subject notes, deeds of trust, or other instruments evidencing or securing indebtedness arising from the purchase or agreement to purchase lots in the Subdivision.

Count V

WHEREFORE, plaintiffs pray judgment in their favor against defendant Grandview invalidating and cancelling

all notes given in payment for lots in in the subdivision of which defendant Grandview claims ownership, invalidating and cancelling all deeds of trust given as security for payment of such notes held by defendant Grandview; and awarding the maker of each such note damages by him suffered, in the sum of the amounts heretofore and hereafter paid with respect to such notes, or alternatively in the sum of twice the amounts paid by each as interest on the notes, and for their attorneys' fees.

(Petitioner's Note: Following is the initial ILSA, which is the Law in effect during the period involving this case. Sections were initially designated in the 1400's, but were subsequently designated in the 1700's. The District Court used both the 1400 designations and the 1700 designations. In the reprint below, the original 1400 designations are used as in the initial law, however, the 1700 section numbers are also shown immediately after the 1400 section numbers.)

TITLE XIV - INTERSTATE LAND SALES

Short Title

Sec. 1401. This title may be cited as the "Interstate Land Sales Full Disclosure Act".

Definitions

Sec. 1402/1701. For purposes of this title, the term --

(1) "Secretary" means the Secretary of Housing and Urban Development;

(2) "person" means an individual, or an unincorporated organization, partnership, association, corporation, trust, or estate;

(3) "subdivision" means any land which is divided or proposed to be divided into fifty or more lots, whether contiguous or not, for the purpose of sale or lease as part of a common promotional plan where subdivided land is offered for sale or lease by a single developer, or a group of developers acting in concert, and such land is contiguous or is known, designated, or advertised as a common unit or by a common name such land shall be presumed, without regard to the number of lots covered by each individual offering, as being offered for sale or lease as part of a common promotional plan;

(4) "developer" means any person who, directly or indirectly, sells or leases, or offers to sell or lease, or advertises for sale or lease any lots in a subdivision;

(5) "agent" means any person who represents, or acts for or on behalf of, a developer in selling or leasing, or offering to sell or lease, any lot or lots in a subdivision; but shall not include an attorney at law whose

representing of another person consists solely of rendering legal services.

(6) "blanket encumbrance" means a trust deed, mortgage, judgment, or any other lien or encumbrance, including an option or contract to sell or a trust agreement, affecting a subdivision or affecting moe than one lot offered within a subdivision, except that such term shall not include any lien or other encumbrance arising as the result of the imposition of any tax assessment by any public authority;

(7) "interstate commerce" means trade or commerce among the several states;

(8) "State" includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States;

(9) "Purchaser" means an actual or prospective purchaser or lessee of any lot in a subdivision;

(10) "offer" includes any inducement, solicitation, or attempt to encourage a person to acquire a lot in a subdivision.

Exemptions

Sec. 1403/1702. (a) Unless the method of disposition is adopted for the purpose of evasion of this title, the provisions of this title shall not apply to --

(1) the sale of lease of real estate not pursuant to a common promotional plan to offer or selll fifty or more lots in a subdivision;

(2) the sale or lease of lots in a subdivision, all of which are five acres or more in size;

(3) the sale or lease of any improved land on which there is a residential, commercial, or industrial building, or to the sale or lease of land under a contract obligating the seller to erect such a building thereon within a period of two years;

(4) the sale or lease of real estate under or pursuant to court order;

(5) the sale of evidences of indebtedness secured by a mortgage or deed of trust on real estate;

(6) the sale of securities issued by a real estate investment trust;

(7) the sale or lease of real estate by any government or government agency;

(8) the sale or lease of cemetery lots;

(9) the sale or lease of lots to any person who acquires such lots for the purpose of engaging in the business of contructing residential, commercial, or industrial buildings or for the purpose of resale or lease of such lots to persons engaged in such business; or

(10) the sale or lease of real estate whivch is free and clear of all liens, encumbrances, and adverse claims if each and every purchaser or his or her spouse has personally inspected the lot which he purchased and if the developer executes a written affirmation to that ef-

fect to be made a metter of record in accordance with the rules and regulations of the Secretary. As used in in this subparagraph, the terms "liens," "encumbrances", and "adverse claims" are not intended to refer to property reservations which land developers commonly convey or dedicate to local bodies or public utilities for the purpose of bringing public services to the land being developed nor to taxes and assessments which, uner applicable State or local law, constitute liens on the property before they are due and payable.

(b) The Secretary may from time to time, pursuant to rules and regulations issued by him, exempt from any of the provisions of this title any subdivision or any lots in a subdivision, if he finds that the enforcement of this title with respect to such subdivision or lots is not necessary in the public interest and for the protection of purchasers by reason of the small amount involved or the limited chacter of the public offering.

Prohibitions Relating To The Sale Or Lease Of Lots In Subdivisions

Sec. 1404/1703. (a) It shall be unlawful for any developer or agent, directly or indirectly, to make use of any means or instruments of transportation or communication in interstate commerce, or of the mails -

(1) to sell or lease any lot in any subdivision unless a statement of record with respect to such lot is

in effect in accordance with section 1407 and a printed property report, meeting the requirements of section 1408, is furnished to the purchaser in advance of the signing of any contract or agreement for sale or lease by the purchaser; and

(2) in selling or leasing, or offering to sell or lease, any lot in a subdivision --

(A) to employ any device, scheme, or artifice to defraud, or

(B) to obtain money or property by means of a material misrepresentation with respect to any informa- information included in the statement of record or the property report or with respect to any other information pertinent to the lot or the subdivision and; upon which the purchaser relies, or

(C) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon a purchaser.

(b) Any contract or agreement for the purchase or leasing of a lot in a subdivision covered by this title, where the property report has not been given to the purchaser in advance or at the time of his signing, shall be voidable at the option of the purchaser. A purchaser may revoke such contract or aagreement within forty-eight hours before he signed the contract or agreement, and the contract or agreement shall so provide, except that the contract or agreement may stipulate that the

foregoing revocation authority shall not apply in the case of a purchaser who (1) has received the property report and inspected the lot to be purchased or leased in advance of signing the contract or agreement, and (2) acknowledges by his signature that he has made such inspection and has read and understood such report.

Registration Of Subdivisions

Sec. 1405/1704. (a) A subdivision may be registered by filing with the Secretary a statement of record, meeting the requirements of this title and such rules and regula- regulations as may be prescribed by the Secretary in furtherance of the provisions of this title. A statement of record shall be deemed effective only as to the lots specified therein.

(b) At the time of filing a statement of record, or any amendment thereto, the developer shall pay to the Secretary a fee, not in excess of $1,000, in accordance with a schedule to be fixed by the regulations of the Secretary, which fees may be used by the Secretary to cover all or part of the cost of rendering services under this title, and such excpenses as are paid from such fees shall be considered non-administrative.

(c) The filing with the Secretaary of a statement of record, or of an amendment thereto, shall be deemed to have taken place upon the receipt thereof, accompanied by payment of the fee required by subsection (b)

(d) The information contained in or filed with any statement of record shall be made available to the public under such regulations as the Secretary may prescribe and copies thereof shall be furnished to every applicant at such reasonable charge as the Secretary may prescribe.

Information Required In Statement Of Record

Sec. 1406/1705. The statement of record shall contain the information and be accompanied by the documents specified hereinafter in this section --

(1) the name and address of each person having an interest in the lots in the subdivision to be covered by the statement of record and the extent of such interest;

(2) a legal description of, and a statement of the total area included in, the subdivision and a statement of the topography thereof, together with a map showing the division proposed and the dimensions of the lots to be covered by the statement of record and their relation to existing streets and roads;

(3) a statement of the condition of the title to the land comprising the subdivision, including all encumbrances and deed restrictions and covenants applicable thereto;

(4) a statement of the general terms and conditions, including the range of selling prices or rents at which it is proposed to dispose of the lots in the subdivision;

(5) a statement of the present condition of access

to the subdivision, the availability of sewage disposal faccilities and other public utilities (including water, electricity, gas, and telephone facilities) in the subdivision, the proximity in miles of the subdivision to nearby municipalities, and the nature of any improvements to be installed by the developer and his estimated schedule for completion;

(6) in the case of any subdivision or portion thereof against which there exists a blanket encumbrance, a statement of the consequences for an individual purchaser of a failure, by the person or person bound, to fulfill obligations under the instrument or instruments creating such encumbrance and the steps, in any, taken to protect the purchaser in such eventuality;

(7) (A) copy of its articles of incorporation, with all amendments thereto, if the developer is a corporation; (B) copies of all instruments by which the trust is created or declared, if the developer is a trust; (C) copies of its articles of partnership or association and all other papers pertaining to its organization, if the developer is a partnership, unincorporated association, joint stock company, or any other form of organization; and (D) if the purported holder of legal title is a person other than developer, copies of the above documents for such person;

(8) copies of the deed or other instrument establishing title to the subdivision in the developer or other

person and copies of any instrument creating a lien or encumbrance upon the title of developer or other person or copies of the opinion or opinions of counsel in respect to the title to the subdivision in the developer or other person or copies of the title insurance policy guaranteeing such title;

(9) copies of all forms of conveyance to be used in selling or leasing lots to purchasers;

(10) copies of instruments creating easements or other restrictions;

(11) such certified and uncertified financial statements of the developer as the Secretary may require; and

(12) such other information and such other documents and certifications as the Secretary may require as being reasonably necessary or appropriate for the protection of purchasers.

Taking Effect Of Statements Of Record And Amendments Thereto

Sec. 1407/1706. (a) Except as hereinafter provided, the effective date of a statement of record, or any amendment thereto, shall be the thirtieth day after the filing thereof or such earlier date as the secretary may determine, having due regard to the public interest and the protection of purchasers. If any amendment to any such statement is filed prior to the effective date of the

statement, the statement shall be deemed to have been filed when such amendment was filed; except that such an amendment filed with the constnet of the Secrtetary, or filed pursuant to an order of the Secretary, shall be treated as being filed as of the date of the filing of the statement of record. When a developer records additional lands to be offered for disposition, he may consolidate the subsequent statement of record with any earlier recording offering subdivided land for disposition under the same promotional plan. At the time of consolidation the developer shall include in the consolidate statement of record any material changes in the information contained in the earlier statement.

(b) If it appears to the Secretary that a statement of record or any amendment thereto, is on its face incomplete or inaccurate in any material respect, the Secretary shall so advise the developer within a reasonable time after the filing of the statement or the amendment, but prior to the date the statement or amendment would otherwise be effective. Such notification shall serve to suspend the effective date of the statemennt or the amendment until thirty days after the developer files such additional information as the Secretary shall require, Any developer, upon receipt of such notice, may request a hearing, and such hearing shall be held within twenty days of receipt of such request

by the Secretary.

(c) If, at any time subsequent to the effective date of a statement of record, a change shall occur affecting any material fact required to be contained in the statement, the developer shall promptly file an amendment thereto. Upon receipt of any such amendment, the Secretary may, if he determines such action to be necessary or appropriate in the public interest or for the protection of purchasers, suspend the statement of record until the amendment becomes effective.

(d) If it apapears to the Secretary at any time that a statement of record, which is in effect, includes any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein not misleading, the Secretary may, after notice, and after opportunity for hearing (at a time fixed by the Secretary) within fifteen days after such notice, issue an order suspending the statement of record. When such statement has been amended in accordance with such order, the Secretary shall so declare and thereupon the order shall cease to be effective.

(e) The Secretary is hereby empowered to make an examination in any case to determine whether an order should issue under subsection (d). In making such examination, the Secretary or anyone designated by him shall have access to and may demand the production

of any books and papers of, and may administer oaths and affirmations to and examine, the developer, any agents, or any other person, in respect of any matter relevant to the examination, such conduct shall be proper ground for the issuance of an order suspending the statement of record.

(f) Any notice required under this section shall be sent to or served on the developer or his authorized agent.

Information Required In Property Report

Sec 1408/1707. (a) A property report relating to the lots in a subdivision shall contain such of the information contained in the statement of record, and any amendments thereto, as the Secretalry may deem necessary, but need not include the documents referred to in paragraphs (7) to (11), inclusive, of section 1406. A property report shall also contain such other information as the Secretary may by rules or regulations require as being necessary or appropriate in the public interest or for the protection of purchasers.

(b) The property report shall not be used for any promotional purposes before the statement of record becomes effective and then only if it is used in its entirety. No person may advertise or represent that the Secretary approves or recommends the subdivision or the sale or lease of lots therein. No portion of the

property report shall be underscored, italicized, or printed in larger or bolder type than the balance of the statement unless the Secretary requires or permits it.

Cooperation With State Authorities

Sec. 1409/1708. (a) In administering this title, the Secretary shall cooperate with State authorities charge with the responsibility of regulating the sale of lots in subdivisions which are also subject to this title and may accept for filing under section 1405 and declare effective as a statement of record, if fhe finds such action to be appropriate in the public interest or for the protection of purchasers, material filed with and found acceptable by such authorities.

(b) Nothing in this title shall affect the jurisdiction of the real estate commission (or any agency or office performing like functions) of any State over any subdivision or any person.

Civil Liabilities

Sec. 1410/1709. (a) Where any part of the statement of record, when such part became effective, contained an untrue statement of a material fact or omitted to state a material fact required to be stated therein, any person acquiring a lot in the subdivision covered by such statement of record from the developer or his agent during such period the statement remained uncorrected

(unless it is proved that at the time of such acquisition he knew of such untruth or omission) may, either at law or in equity, in any court of competent jurisdiction, sue the developer.

(b) Any developer or agent, who sells or leases a lot in a subdivision --

(1) in violation of section 1404, or

(2) by means of a property report which contained an untrue statement of a material fact; or omitted to state a material fact required to be stated therein, may be sued by the puirchaser of such lot.

(c) The suit authorized under subsection (a) or (b) fmay be to recover such damages as shall represent the difference between the amount paid for the lot and the reasonable cost of any improvements thereto, and the lesser of (1) the value thereof as of the time such suit was brought, or (2) the price at which such lot shall have been dispósed of in a bona fide market transaction before suit, or (3) the price at which such lot shall have been disposed of after suit in a bona fide market transaction but before judgment.

(d) Every person who becomes liable to make any payment under this section may recover contribution as in cases of contract from any person who, if sued separately, would have been liable to make the same payment.

(e) In no case shall the amount recoverable under

this section exceed the sum of the purchase price of the lot, the reasonable cost of improvements, and reasonable court costs.

Court Review Of Orders

Sec. 1411/1710. (a) Any person, aggrieved by an order or determination of the Secretary issued after a hearing, may obtain a review of such order or determination in the court of appeals of the United States, within any circuit wherein such person resides or has his principal place of business, or in the United "States Court of Appeals for the District of Columbia, by filing in such court, within sixty days after the entry of such order or determination, a written petition praying that the order or determination of the Secretary be modified or be set aside in whole or in part. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Secretary, and thereupon the Secretary shall file in the court the record upon which the order or determination complained of was entered, as provided in section 2112 of title 28, United States Code. No objection to an order or determination of the Secretary shall be considered by the court unless such objection shall have been urged before the Secretary. The finding of the Secretary as to the facts, if support by substantial evidence, substantial evidence, shall be conclusive. If either party shall apply to the court for leave to adduce additional

evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the hearing before the Secretary, the court may order such additional evidence to be taken before the Secretary and to be adduced upon a hearing in such maner and upon such terms and conditions as the court may seem proper. The Secretary may modify his findings as to the facts by reason of the additional evidence so taken, and shall file such modified or new findings, which, if supported by substantial evidence, shall be conclusive, and his recommendaion, if any, for the modification or setting aside of the original order. Upon the filing of such petition, the jurisdiction of the court shall be exclusive and its judgment and decree, affirming, modifying, or setting aside, in whole or in part, any order of the Secretary, shall be final, subject to revierw by the Supreme Court of the United States upon certiorari or certification as provided in Section 1254 of title 28, United States Code.

(b) The commencement of proceedings under subsection (a) shall not, unless specifically ordered by the court, operate as a stay of the Secretary's order.

Limation Of Actions

Sec. 1413/1711. No action shall be maintained to enforce any liability created under section 1410(a) or (b)

(2) unless brought within one year after the discovery of the untrue statement or the omission, or after such discovery should have been made by the exercise of reasonable diligence, or, if the action is to enforce a liability created under section 1401 (b) (1), unless brought within two years after the violation upon which it is based. In no event shall any such action be brought by a purchaser more than three years after the sale or lease to such purchaser.

Contrary Stipulations Void

Sec. 1413/1712. Any condition, stipulation, or provision binding any person acquiring any lot in a subdivision to waive compliance with any provision of this title or of the rules and regulations of the Secretary shall be void.

Additional Remedies

Sec. 1414/1713. The rights and remedies provided by this title shall be in addition to any and all other rights and remedies that may exist at law or in equity.

Investigations, Injunctions, And Prosecution Of Offenses

Sec. 1415/1714. (a) Whenever it shall appear to the Secretary that any person is engaged or about to engage in any acts or practices which constitute or will con-

stitute a violation of the provisiions of this title, or of any rule or regulation prescribed pursuant thereto, he may, in his discretion, bring an action any district court of the United States, or the United States District Court for the District of Columbia to enjoy (sic) such acts or practices, and, upon a proper showing, a permanent injunction or restraining order shall be granted without bond. The Secretary may transmit such evidence as may be available concerning such acts or practices to the Attorney General who may, in his discretion, institute the appropriate criminal proceedings under this title.

(b) The Secretary may, in his discretion, make such investigations as he deems necessary to determine whether any person has violated or is about to violate any provision of this title or any rule or regulation prescribed pursuant thereto, and may require or permit any person to file with him a statement in writing, under oath or otherwise as the Secretary shall determine, as to all the facts and circumstances concerning the matter to be investigated. The Secretary is authorized, in his discretion, to publish information concerning any such violations, and to investigate any facts, conditions, practices, or matters which he may deem necessaary or proper to aid in the enforcement of the provisions of this title, in the prescribing of rules and regulations thereunder, or in securing information to serve as a basis for recommending further legislation concerning

the matters to which this title relates.

(c) For the purpose of any such investigation, or any other proceeding under this title the Secretary, or any officer designated by him, is empowered to administer oaths and affirmations, subpena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memorandums, or other records which the Secretary eems relevant or material to the inquiry. Such attendance of witnesses and the production of any such records may be required from any place in the United States or any State at any designated place of hearing.

(d) In case of contumacy by, or refusal to obey a subpena issued to, any person, the Secretary may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in requiring the attendance and terstimony of witnesses and the production of books, papers, correspondence, memorandums, and other records and documents. And such court may issue an order requiring such person to appear before the Secretary or any office designated by the Secretary, there to produce records, if so ordered, or to give testimony touching the matter under investigation or in question; and any failure to obey such order of the

court may be punished by such court as a contempt thereof. All process in any such case may be served in the judicial district whereof such person is an inhabitant or wherever he may be found.

(e) No person shall be excused from attending and testifying or from producing books, papers, correspondence, memorandums, and other records and documents before the Secretary, or in obedience to the subpena of the Secretary or any officer designated by him, or any cause or proceeding instituted by the Secretary, on the ground that the testimony or evidence, documentary or otherwise, required of himf may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

Administration

Sec. 1416/1715. (a) The authority and responsibility for administering this title shall be in the Secretary of Housing and Urban Development or to boards of such employees, including functions, duties, and powers with

respect to investigating, hearing, determining, ordering, or otherwise acting as to any work, business, or matter under this title. The persons to whom such delegations are made with respect to hearing functions, duties, and powers shall be appointed and shall serve in the Department in compliance with sections 3105, 3344, 5362, and 7521 of title 5 of the United States Code. The Secretary shall by rule prescribe such rights of appeal from the decisions of his hearing examiners to other hearing examiners or to other officers in the Department, to boards of officers or to himself, as shall be appropriate and in accordance with law.

(b) All hearings shall be public and appropriate records thereof shall be kept, and any order issued after such hearing shall be based on the record made in such hearing which shall be conducted in aceordance with the provisions of the Administrative Procedure Act.

Unlawful Representations

Sec.. 1417/1716. The fact that a statement of record with respect to a subdivision has been filed or is in effect shall not be deemed a finding by the Secretary that the statement of record is true and accurate on its face, or be held to mean the Secretary has in any way passed upon the merits of, or given approval to, such subdivision. It shall be unlawful to make, or cause to be made, to any prospective purchaser any representa-

tion contrary to the foregoing.

Penalties

Sec. 1418/1717. Any person who willfully violates any of the provisions of this title or the rules and regulations prescribed pursuant thereto, or any person who willfully, in a statement of record filed under, or in a property report issued pursuant to, this title, makes any untrue statement of a material fact or omits to state any material fact required to be stated therein, shall upon conviction be fined not more than $5,000 or imprisoned not more than five yeaars, or both.

Rules, Regulations, And Orders

Sec. 1419/1718. The Secretary shall have authority from time to time to make, issue, amend, and rescind such rules and regulations and such orders as are necessary or appropriate to the exercise of the functions and powers conferred upon him elsewhere in this title. For the purpose of his rules and regulations, the Secretary may classify persons and matters within his jurisdiction and prescribe different requirements for different classes of persons or matters.

Jurisdiction Of Offenses And Suits

Sec. 1420/1719. (a) The district courts of the United States, the United States courts of any territory, and

the United States District Court for the District of Columbia shall have jurisdiction of offenses and violations under this title and under the rules and regulations prescribed by the Secretary pursuant thereto, and concurrent with State courts, or all suits in equity and actions at law brought to enforce any liability or duty created by this title. Any such suit or action may be brought to enforce any liability or duty created by this title. Any such suit or action may be brought in the district wherein the defendant is found or is an inhabitant or transacts business, or in the district where the offer or sale took place, if the defendant participated therein, and process in such cases may be served in any other district of which the defendant is an inhabitant or whereever the defendant may be found. Judgments and decrees so rendered shall be subject to review as provided in sections 1254 and 1291 of title 28, United States Code. No case arising under this title and brought in any State court of competent jurisdicition shall be removed to any court of the United States, except where the United States or any officer or employee of the United States in his official capacity is a party. No costs shall be assessed for or against the Secretary in any proceeding under this title brought by or against him in the Supreme Court or such other courts.

Appropriations

Sec. 1421/1720. There are authorized to be appropriated such sums as may be necessary to carry out this title.

Effective Date

Sec. 1422/no corresponding "1700" section. This title shall take effect upon the expiration of two hundred and seventy days after the date of its enactment.*

(Petitioner's Note: * Effective date was April 28, 1969.)

App. 7

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

Civil Docket Continuation Sheet

Plaintiff	Defendant	Docket No.
Michael S. McFarland, et al.	Winnebago South, Inc. et al.	19967-CV-W-B-9 Page 95

Date	NR.	Proceedings
6/3/96	520	ORDER - 1) the dfts had a 7th Amendment right to a jury trial; 2) because pursuant to Rule 54(b), FRCP, there is no just reason for delay, jgm is entered in favor of Grandview Bank;

Supreme Court, U.S.
FILED
DEC 15 1999
CLERK

No. 99-827

In The

Supreme Court of the United States

ROBERT V. STEINHILBER,

Petitioner,

v.

MICHAEL S. McFARLAND, et al.,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eighth Circuit

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTION PRESENTED

WHETHER THE CIRCUIT COURT ERRED IN FINDING THAT PETITIONER WAS NOT DENIED A RIGHT TO A JURY TRIAL IN THE DISTRICT COURT AS THE REMEDIES SOUGHT AND GRANTED AGAINST HIM WERE EQUITABLE IN NATURE?

LIST OF PARTIES

Robert V. Steinhilber, Petitioner; Johnita F. Steinhilber, co-defendant; Winnebago South, Inc., a Missouri corporation, co-defendant; Michael S. and Donna C. McFarland, Robert F. and Cheryl Morgan, Norman R. and Phyllis A. Cates, Wayne E. and Annabell Lasley, Richard A. and Bonnie L. LaPointe, Glen G. and Opal Pittman, G.H. and Harriett L. Ricker, Orson A. and Glenna M. Rau, Gary and Carolyn Sue Spears, Paul and Juanita L. Schafer, Robert J. and Anna E. Schumacher, Christ and Sophia Skiriotis, S.N. and Irene P. Whitcanack, Arthur and Kathleen Zago, Respondents.

CORPORATE DISCLOSURE

There are no parent corporations involved, and there are no publicly held companies involved, only the privately held corporation, co-defendant Winnebago South, Inc.

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OPINIONS BELOW

The Opinions below are attached to petitioner's Petition at appendices 1, 2 and 3.

JURISDICTION

The Judgment of the Court of Appeals for the Eighth Circuit was entered on August 11, 1999. A Petition for Rehearing was filed and the Order denying the Petition was entered September 16, 1999. Petitioner invokes the Court's jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Petitioner adequately sets forth the constitutional and statutory provisions involved in this Petition.

STATEMENT OF THE CASE

This appeal comes before this Court after a long and tortuous legal path. This case was originally filed in December of 1971. The fundamental claim made in this case is based upon the Interstate Land Full Disclosure Act ("ILSA"), 15 U.S.C. § 1703, *et seq.* ILSA became effective April 28, 1969. Petitioner Robert V. Steinhilber ("RVS") and his wife, co-defendant Johnita F. Steinhilber ("JFS") and their company, Winnebago South, Inc. ("WSI"), were developing a real estate subdivision and thereafter filed a Statement of Record and Property Report (the "Property

Report") pursuant to the requirements of ILSA. The development failed, this case was filed and the Court appointed a Receiver of WSI's assets.

On March 7, 1973, this case was designated to proceed as a class action under Rule 23(b)(1) and (2), FRCP. The class was later redefined to those persons who purchased lots between April 28, 1969 and October 22, 1971.

Discovery proceeded, and after a significant delay in the prosecution of the case, motions for partial summary judgment filed by virtually all of the parties were briefed and heard by the District Court. The District Court ruled on the summary judgment motions, making certain determinations from which RVS and JFS appealed, and the matter thereafter eventually (and finally) went to a jury trial. The District Court presided over a twenty-eight day jury trial (conducted between November 16, 1995 and February 13, 1996) which resulted in a verdict against RVS on all five counts related to him and against JFS on four out of five counts related to her. After numerous post-trial motions, the District Court filed its Judgment in a Civil Case on March 14, 1997, which was entered on March 19, 1997. RVS thereafter filed a Motion For Judgment As A Matter Of Law under Rule 50(b), FRCP, or, in the alternative, for a New Trial, under Rule 59, FRCP. JFS only filed a Motion for Judgment as a Matter of Law. The District Court denied both motions on June 30, 1997 (Docket #598). On July 24, 1997 RVS and JFS filed Notices of Appeal to the Eighth Circuit. The appeals were briefed by RVS separately, but plaintiffs filed a consolidated brief and the Court of Appeals issued its opinion affirming the

District Court's actions on August 11, 1999. On September 16, 1999, the court entered an Order denying RVS's Petition for Rehearing.

ARGUMENT

I. RVS's PETITION FOR WRIT OF CERTIORARI SHOULD BE DENIED

RVS's Petition for a Writ of Certiorari is just the latest chapter in this unfortunate piece of litigation which has trudged through the courts for the past twenty-eight years. Like almost everything else filed by RVS, the Petition has no merit. RVS claims that three bases support the granting of the Petition, all of which allegedly deal with the lower court's denial of his right to a jury trial (despite having a twenty-eight day jury trial). An examination of RVS's brief to the Eighth Circuit reveals that the true dispute that he has with the District Court and now the Eighth Circuit is the District Court's use of certain stipulated facts in making pretrial rulings, which in turn had the effect of taking undisputed factual issues away from the trier of fact. Consequently, only equitable issues remained. The Eighth Circuit then correctly ruled that "the Steinhilbers were not denied their right to a jury in the district court, as the remedies sought and granted against them were equitable in nature. *See, Kerr v. Charles F. Vatterott & Co.*, No. 98-1677, 1999 WL 493996, at 5 (8th Cir. July 12, 1999) [now found at 184 F.3d 938]; *Tri-State Hotels, Inc. v. FDIC*, 79 F.3d 707, 715 (8th Cir. 1996)." The court then found that it was unable to review any of the other fact-based claims raised by RVS and JFS because the

Steinhilbers failed to submit the *necessary* transcripts pursuant to Fed.R.App.P. 10(b)(2).

The issues raised by RVS in his pro se brief before the Eighth Circuit were frankly difficult to decipher. Plaintiffs believe the issues raised by RVS to be as follows:

I. Whether The District Court Erred In Its Pretrial Ruling Wherein It Found That Certain Proposed Factual Stipulations Were Binding Upon RVS In Part Because Of The Alleged Failure Of RVS's Attorney To Contest The Same?

II. Whether The District Court Erred In Making Certain Additional Pretrial Factual Findings Based In Part Upon The Above Referenced Factual Stipulations?

III. Whether The District Court Erred In Its Pretrial Ruling Wherein It Found That Certain Proposed Factual Stipulations Were Binding Upon RVS When Certain Stipulations Were Allegedly "Clearly Erroneous"?

IV. Whether The District Court Erred In Making Certain Factual Findings Based Upon The Alleged "Tainted" Testimony Of The WSI Receiver And "Other Evidence" Offered By Plaintiffs Which Was Allegedly "Clearly False" Or "Clearly Erroneous"?

V. Whether The District Court Erred In Instructing The Jury The RVS Had "Agreed" To The Above Referenced Factual Stipulations And In Permitting Plaintiffs To Do Likewise?

VI. Whether The District Court Erred In Admitting Certain Testimony Over RVS's Objections?

VII. Whether The District Court Erred In Refusing To Admit Certain Testimony Offered By RVS?

VIII. Whether The District Court Improperly Made Pretrial And Trial Rulings Which Limited RVS's Ability To Present A Proper Defense?

IX. Whether The District Court Erred In Its Instructions To The Jury?

X. Whether The District Court Erred In Denying RVS's Motion For Judgment As A Matter Of Law And Motion For A New Trial?

Significantly, RVS *never* specifically raised the jury trial issue which is now the focus of the Petition. JFS did, however, raise the issue in her brief to the Eighth Circuit, which provided the impetus for the court's ruling on the jury trial issue. Consequently, RVS raises the issue for the first time in his Petition – which obviously is improper. *See, Grupo Mexican de Desarrollo S.A. v. Alliance Bond Fund, Inc.*, 119 S.Ct. 1961 (1999); *National Collegiate Athletic Association v. Smith*, 119 S.Ct. 924 (1999); *Pennsylvania Dept. of Corrections v. Yeskey*, 524 U.S. 206, 118 S.Ct. 1952 (1998); *Ohio Forestry Association v. Sierra Club*, 523 U.S. 726, 118 S.Ct. 1665 (1998); and, *Blessing v. Freestone*, 520 U.S. 329, 117 S.Ct. 1353 (1997).

As was stated above, RVS's real objection with the rulings of the District Court and now the Eighth Circuit is the District Court's use of certain stipulated facts in making pretrial rulings, which in turn had the effect of taking undisputed factual issues away from the trier of fact. This dispute clearly does not rise to the level required by Supreme Court Rule 10. The Court of Appeals has not entered a decision in conflict with another Circuit or with this Court nor does the court's decision call for an exercise of this Court's supervisory powers. As such, the case is not a candidate for the issuance of a writ of certiorari.

II. THE PETITION CONTAINS MISSTATEMENTS OF FACT AND LAW

Pursuant to Supreme Court Rule 15(2), Respondents are required to address any perceived misstatement of fact or law in the Petition that bears on what issues properly would be before the Court if certiorari were granted. The state of the record on appeal in this case, which is virtually non-existent by reason of RVS's failure to provide the necessary transcripts for appellate review, makes it difficult to address all of the misstatements of fact and law contained in the Petition. Nevertheless, the *primary* misstatements are as follows:

1. At page 4 of the Petition, RVS gratuitously and falsely states, "Respondents prosecuted the action on an occasional basis only; it had no merit. At one time Plaintiffs' lead attorney stated his law firm had filed the case to gain experience in class action lawsuits, which were then (1971) becoming popular with attorneys." This statement is obviously false. The case was filed to seek redress for the wrongs committed by RVS and others against the plaintiff class.

2. At page 4 of the Petition, RVS falsely states: "At the time this lawsuit was filed, WSI was not delinquent in any way, shape, or form, i.e., not in regards to financial *or* developmental obligations." The trial court's pretrial findings, by way of *stipulated* findings of fact, clearly rebuts RVS's statement. The court's findings are replete with examples. For instance, the case was initially filed on December 23, 1971. On October 22, 1971, things had deteriorated to the point that HUD was compelled to

issue an Order of Suspension directing a halt in all sales of property in the development.

3. At page 5 of the Petition, RVS also falsely states that plaintiffs sought and obtained the appointment of a receiver, yet "no evidence was ever produced to substantiate their allegations". Again, RVS's statement ignores the trial court's voluminous pretrial findings of fact, which are supported by facts found to have been *stipulated* to by all of the relevant parties.

4. At page 9 of the Petition, RVS seeks the Court's sympathy for proceeding herein pro se, "because he is almost 74 years old and his social security benefits provide his only income". RVS does not disclose the fact that his spouse is an actively practicing, licensed attorney.

CONCLUSION

WHEREFORE, for the reasons stated above, respondents respectfully pray this Court deny RVS's Petition for a Writ of Certiorari.

Respectfully submitted,

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Supreme Court, U.S.
FILED
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No. 99-827

In The
SUPREME COURT OF THE UNITED STATES
October Term, 1999

In re Robert V. Steinhilber,

Petitioner,

v.

Michael S. McFarland, et al.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

PETITIONER'S REPLY TO RESPONDENTS' BRIEF

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15pp

QUESTIONS PRESENTED

I. WHETHER A DISTRICT COURT HAS THE AUTHORITY TO MAKE "FINDINGS OF FACTS" PRIOR TO HOLDING A PURPORTED SEVENTH AMENDMENT TRIAL BY JURY, BIND THE JURY TO THOSE "FACTS", AND PROHIBIT A PARTY FROM PRESENTING EVIDENCE AND ARGUMENT CONTRADICTING THOSE "FACTS".

II. WHETHER THE REMEDIES SOUGHT BY THE PLAINTIFFS IN A CAUSE WHICH WAS FILED BY THEM AND ACCEPTED BY THE DISTRICT COURT PURSUANT TO A FEDERAL STATUTE WERE EQUITABLE IN NATURE SUCH AS TO DISQUALIFY DEFENDANTS FROM RECEIVING A SEVENTH AMENDMENT JURY TRIAL WHEN PLAINTIFFS HAD ASKED FOR THE SPECIFIC REMEDIES PROVIDED FOR IN THE STATUTE AND "FOR SUCH OTHER RIGHTS OR REMEDIES EXISTING AT LAW OR IN EQUITY AS THE COURT MAY DEEM REASONABLE AND APPROPRIATE".

III. WHETHER A DEFENDANT IN A CLASS ACTION LAWSUIT FILED BY PLAINTIFFS

AND ACCEPTED BY THE DISTRICT COURT PURSUANT TO THE INTERSTATE LAND SALES FULL DISCLOSURE ACT AS IT EXISTED FROM ITS INITIAL EFFECTIVE DATE OF APRIL 28, 1969, THROUGH DECEMBER 23, 1971, WHEREIN PLAINTIFFS HAD ASKED FOR THE SPECIFIC REMEDIES PROVIDED FOR IN THE STATUTE AND "FOR SUCH OTHER RIGHTS OR REMEDIES EXISTING AT LAW OR IN EQUITY AS THE COURT MAY DEEM REASONABLE AND APPROPRIATE", IS ENTITLED TO A SEVENTH AMENDMENT JURY DETERMINATION OF THE AMOUNT OF DAMAGES.

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PETITIONER'S REPLY TO RESPONDENTS' BRIEF

After reading Respondents' Brief in Opposition to his Petition for Writ of Certiorari, Petitioner is reminded of what then Secretary of State Cordell Hull told the Japanese Ambassadors when on December 7, 1941 they delivered their government's demands on the United States. He said that in all his years he had never seen a document so full of distortions, disingenuous statements, and outright falsehoods. Petitioner has similar feelings about the Brief Respondents' Counsel (Counsel) has filed.

Petitioner realizes that the Court cannot know the specifics of these improper statements, which unless addressed in this Reply might be accepted and considered. He will address the most important matter first; that is, whether he "raised the jury trial issue" (Counsel's words) in his Eighth Circuit Court Appeal. (Pages 4 & 5 of Respondent's Brief.) Counsel claims he "never specifically" did so.

Rather than quoting them, Counsel has actually rewritten the issues Petitioner raised in the Eighth Circuit Court so that Counsel's wording supports Counsel's conclusion. In an attempt to excuse this action, Counsel claims it is "difficult to decipher" Petitioner's pleading. The words Counsel has used are not those of Petitioner, nor do they reflect his plain words and purposes. They are designed to cause this Court to deny Certiorari in accordance with the five cases Counsel cites as authority for doing do. Petitioner believes it is a deceitful ploy.

Page limitations for this Reply don't allow Petitioner to quote the "Statement Of Issues" submitted to the Eighth Circuit Court, but he will refer to and quote from various sections of his Brief to that Court so as to show this Supreme Court that he did raise "the jury trial issue" in his appeal to the Eighth Circuit Court. Page and time limitations for this Reply do not allow for a complete line by line analysis, but Petitioner believes the following examples will suffice.

(References are to Petitioner's Eighth Circuit Brief.)

1. Under "Statement Of Issues" (p. vi), as an introductory statement, Petitioner (then Appellant) stated:

> "..... whether this Eighth Circuit Court of Appeals will allow the District Court to deny him a full, fair and impartial adjudication of the charges lodged against him by reason of its numerous actions/rulings both prior to and during jury trial".

2. On page iii of Brief, under "Table Of Cases, Statutes, and Authorities", Petitioner cited the Seventh Amendment to the United States Constitution, the "Manual for Complex Litigation Third" and Wright's "Law Of Federal Courts", 2nd Edition (both reciting rules and guidelines for Seventh Amendment jury trials). Also cited were United States Supreme Court cases ruling on requirements for Seventh Amendment jury trials: Beacon Theatres, Inc. v. Westover, 359 U.S. 500 (1959), and Dairy Queen, Inc. v. Wood, 369 U.S. 469 (1962). Also cited was Brownlee v. Yellow Freight Systems, Inc., 921 F.2d 745 (8th Cir. 1990, applying principles in Beacon and Dairy Queen.

3. At the very beginning of his "Summary Of Argument" (page 24), Petitioner stated:

> "The District Court violated RVS's right to a full, fair and impartial jury trial under the Seventh Amendment to the United States Constitution and contrary to rulings by the United States Supreme Court and of this United States Court of Appeals for the Eighth Circuit honoring that Seventh Amendment right. The details of this are set forth in Sections I, A and B of this Brief, but for purposes of this summary, it can be said that the District Court did this by making findings of fact which should have been left for the jury to make after RVS (and his co-defendants) had a full, fair and impartially adjudicated opportunity to present all of their reasonably relevant and material testimony and other evidence to the jury. Instead of leaving all fact finding for the jury, the Court ordered the jury to ac-

> cept its findings, and did so in such a manner as to be highly prejudicial against RVS (and his co-defendants). In doing so, it even made a misrepresentation to the jury, and further, allowed Plaintiffs' Counsel to do likewise, e.g., it caused the jury to believe RVS (and JFS) had "agreed" to alleged facts by stipulations, when, in truth, the (current) District Court (judge) had by ruling ordered the alleged facts binding on them in spite of substantial evidence they were false and had never been agreed to by RVS (and JFS); and further even, that some other judge in another trial had made that ruling and other rulings, not the then presiding (current) judge."

4. And continuing on page 26 of Petitioner's "Summary Of Argument", he stated:

> "In effect, the District Court directed the jury to find against RVS by telling the jurors they were bound by the adverse pretrial rulings which had been made against him."

5. In the "Argument" section of Petitioner's Brief, beginning on page 28, after stating that the District Court should not be allowed to make findings of fact "prior to jury trial", Petitioner quoted that Court's Order of September 13, 1994 (which was prior to jury trial):

> "Week-long evidentiary hearings were held in March and July, 1994. Based upon the evidence presented at these hearings AND on the stipulations of fact entered into between plaintiffs and defendants Robert V. Steinhilber and Johnita F. Steinhilber, I make the following findings of fact." (Emphasis added.) The Court went on to list its findings.

(Petitioner's note: Neither Petitioner nor his wife (JFS) ever entered into the stipulations. As part of the District Court's findings of fact prior to jury trial, it issued an Order that they had done so. The Order was in the form of sanctions against Petitioner and his wife because their then attorney had allegedly failed to make a timely

pleading during proceedings presided over by a prior judge approximately eleven years earilier. That prior judge, as well as a second judge, had made no such ruling or even indication of any such violation. In fact, Respondents then attorney had failed to make a proper pleading. The Court made other "findings of fact" prior to jury trial, aside from the Order regarding the stipulations.)

6. On page 29 of the Brief, Petitioner stated:

> "In their Complaint, Plaintiffs asked for a jury trial. In their initial responses to the Complaint, and throughout all proceedings, RVS and JFS continued to ask for a jury trial. As the trial neared, however, the Court indicated that any jury should be merely an advisory jury, and Plaintiffs' Counsel agreed. RVS, JFS and Grandview strongly objected, and the Court proceeded to impanel a jury. After the verdicts, which were completely in Grandview's favor and in JFS's favor as to whether she was guilty of conspiracy, the Court and Plaintiffs' Counsel opted for considering the jury as having been merely an advisory jury. Strong objections and pleadngs were presented to the Court by RVS, JFS and Grandview, and the Court finally ruled that they were entitled to a Seventh Amendment Jury trial."

7. On page 29, Petitioner quotes from § 22.53, note 455, of "The Manual for Complex Litigation Third", which cites Beacon, and states:

> "The court must also consider the proper sequencing of the jury and nonjury decision to comply with Beacon Theatres, Inc. v. Westover, under which the right to a jury trial on legal claims may not be lost by a prior determination of equitable claims, "except under the most imperative circumstances." The Court went on to say that it "cannot now anticipate" such circumstances."

Petitioner went on to say on page 30:

"Beacon was followed by other cases which held against the "deprivation of the defendant's right to trial by jury". (Dairy Queen, Inc. v. Wood, 369 U.S. 469, 5 Fed. Rules Serv. 2d, 1962.) In Brownlee v. Yellow Freight system, Inc., 921 F.2d 745 (1990), an Eighth Circuit Court of Appeals case, the Court stated:

"Where legal and equitable claims are joined in the same complaint, legal claims should be tried first to the jury and facts decided by the jury will be conclusively established as between the parties under the doctrine of collateral estoppel."

Thus it is seen that Petitioner very strenuously raised the Seventh Amendment "jury trial issue" (Respondents' words) in both of the lower courts.

Under their "Argument" heading (p. 3), Respondents cite two recent Eighth Circuit cases having to do with equitable issues. Neither of them addresses Seventh Amendment jury trial rights, the matters which are of concern in Petitioner's case.

Under their "Statement Of The Case" (p. 1), Respondents state Winnebago South, Inc. (WSI) is owned by both Petitioner and his wife (JFS), using the term "their company". Counsel knows very well that Petitioner alone owned WSI, and that JFS was not a stockholder, officer, director, employee, consultant, etc. in WSI, and took no part in its operations. There is no evidence contrary to these facts, and there is substantial evidence supporting them, including Plaintiffs'/Respondents own pleadings, and testimony of numerous witnesses, e.g., WSI officers and other employees, directors, Court-appointed defendants' liaison attorney, and testimony of Respondents' witnesses.

In the same sentence as addressed above, Respondents' indicate that JFS participated in filing WSI's HUD Statement of Record and Property Report. There is not an

ounce of truth to that - JFS had nothing to do with making any such filings. This statement by Respondents is the first time in the more than 28 years of this case that Plaintiffs/Respondents, or anyone else has even suggested such an allegation. The statements in the paragraph immediately above stand. (All reports to HUD were true!)

Respondents continue on page 2: "The development failed ....."

The development did not fail, it was stopped as a result of the actions of the then Plaintiffs'/Respondents' attorneys and racially motivated vigilantes from the Winnebago North subdivision who had vowed to stop its development by their vigilante actions, which included cutting a whole in the Winnebago South dam one night, among other such things. Plaintiffs'/Respondents' attorneys invited Winnebago South lot owners to numerous meetings to develop their lawsuit, and finally got 12 families to agree to filing it, out of a total of 326. The overwhelming evidence is there, the record clear, these are the facts. These are some of the reasons a Seventh Amendment jury trial was so feared by Plaintiffs/Respondents and the District Court.

Near the bottom of page 2, Respondents state: "The appeals were briefed by RVS separately, ..."

That is an absolutely false statement, JFS does her own pleadings and would not allow Petitioner to do them for her. This is just another example of the reckless, irresponsible attitude of Counsel for Respondents. On one occasion years ago, Respondents' then Counsel (and then an associate of present Counsel) wrote the Judge that that Petitioner and his wife (JFS) were divorced. They have now been married 48 years, with no hint of divorce. Petitioner found the letter and other items in the Federal Records Center in Kansas City, not in the District Court.

On page 6 of Respondents' Brief, under the heading "II. THE PETITION CONTAINS MISSTATEMENTS OF FACT AND LAW", Counsel states: "The state of the record in this case, which is virtually non-existent by

reason of RVS's failure to provide the necessary transcripts for appellate review, makes it difficult to address all of the misstatements of fact and law contained in the Petition. Nevertheless, the primary misstatements are as follows:"

First of all, Respondents are free to order any and all of the transcripts they want. If they prevail in the case, they will be reimbursed - the subdivision has easily increased in value to 12 million plus dollars. And, under the Rules, they can charge Petitioner for the transcripts.

Secondly, Respondents' statement is absolutely false. The District Court record contains several thousand pages of court-reporter transcripts (2,046 pages alone had been ordered by Petitioner's wife) involving 22 different hearing dates, 47 sets of court-deputy minute sheets for as many court sessions, and many thousands of pages of pleadings (with hundreds of exhibits).

Following is item 1 of the alleged "MISSTATEMENTS":

"1. At page 4 of the Petition, RVS gratuitously and falsely states, "Respondents prosecuted the action on an occasional basis only; it had no merit. At one time Plaintiffs' lead attorney stated his law firm had filed the case to gain experience in class action lawsuits, which were then (1971) becoming popular with attorneys." This statement is obviously false. The case was filed to seek redress for wrongs commited by RVS and others against the plaintiff class."

Petitioner believes the tone of Respondents' statement and the use of the words "obviously false" provides an insight into the why and how of Counsel's thinking in regard to making various irresponsible statements. The District Court record is clear: the case had been on the docket for more than 20 years before Petitioner and his wife were, for lack of finances, required to become active in its proceedings. During that period of time, there were long periods of time when Plaintiffs/Respondents failed to prosecute the case. In the most grievous instance - from June 30, 1981 to December 5, 1985 (almost 4½ years) -

the Clerk of the Court issued a "J-6 Card" dismissing the case for lack of prosecution, a procedure which could have been applied after only 3 years of lack of prosecution. It was not until November 29, 1985 that defendant Grandview Bank filed a Motion To Dismiss for lack of prosecution. That is when (12-5-85) Plaintiffs'/Respondents' Counsel filed a pleading opposing the Motion and reviving the case.

Further, in regard to the statement by Respondents' previous lead attorney, that statement was made in front of three individuals, including the court-appointed defendants' liaison attorney, and to Petitioner's knowledge, it has never been denied by that lead attorney, even though the statement has been in pleadings and testimony several times. Respondents' present Counsel was not there, and could not know, and under existing circumstances can not responsibly state it is obvious the statement wasn't made.

Still further, Plaintiffs/Respondents have not produced a scintilla of evidence that RVS and others committed any wrongs whatsoever. Their entire case is based upon the court ordered, alleged stipulations.

In regard to the circumstances Respondents cite as the reasons for filing this case, Petitioner refers to his statements on page 6 of this Reply, beginning with:

"The development did not fail, ..."

Following is item 2 of the alleged 'MISSTATEMENTS":

"2. At page 4 of the Petition, RVS falsely states: "At the time this lawsuit was filed, WSI was not delinquent in any way, shape, or form, i.e., not in regards to financial or developmental obligations." The trial court's pretrial findings, by way of stipulated finds of fact, clearly rebuts RVS's statement. The court's findings are replete with examples. For instance, the case was initially filed on December 23, 1971. On October 22, 1971, things had deteriorated to the point that HUD was compelled to issue an Order of Suspension directing a halt in all sales of property in the development."

Respondents' statement in this item 2 tends to prove the truth of the statement of Petitioner which they say is false. Even when challenged by Petitioner's succinct statement that WSI was not delinquent in any way, shape, or form, they cannot produce a single way, shape, or form in which WSI was delinquent. The strongest wording they can "muster-up" is that "things had deteriorated to the point that HUD was compelled to issue an Order of Suspension directing a halt in all sales of property in the development." HUD was not "compelled" to do anything of the kind! The record is clear and has been accepted by Respondents themselves that all sales had been stopped voluntarily by WSI after the Winnebago North vigilantes came down one night and cut a whole in the Winnebago South dam - they got caught in the act, with the Sheriff on the scene. Plaintiffs'/Respondents attorneys and the vigilantes had been sending false allegations to HUD for months before this lawsuit was file, as part of their plan to stop the Winnebago South development. Their former lead attorney once admitted they had been in contact with HUD. Petitioner requested a hearing on the allegations, according to ILSA Rules, but he suffered a severe heart attack which disabled him for approximately two years, and no hearing ever took place.

Respondents' statement in this item 2 refers to "The trial court's pretrial findings", and "The court's findings". It is about the Court making such pretrial findings that Petitioner complains. (Emphasis added.)

Item 3 of the alleged 'MISSTATEMENTS' is basically a repeat of item 2, in that it provides no evidence which contradicts Petitioner's challenge that "no evidence was ever produced to substantiate their allegations". All that is provided are words that "the trial court's voluminous pretrial findings of fact, which are supported by facts found to have been stipulated to by all of the relevant parties." (Emphasis added.) Their entire reliance is upon the very pretrial findings by the court about which Petitioner complains. Respondents seem to admit that the Court found facts in addition to the alleged stipulations. They state those additional "facts" support the "facts" in the alleged stipulations. (In truth, there was no agree-

ment as to stipulations. By letter to the second judge in this case (5-31-85) Respondents admitted was no agreement (Cir. Ct. Ex 230). Neither the first or the second judge found an agreement had taken place.

In regard to item 4, wherein Respondents claim Petitioner is seeking sympathy from the Court, it is obvious from a reading of his Petition that he was merely explaining why he was proceeding pro se. Counsel was certainly disingenuous in claiming Petitioner had been disingenuous in not disclosing to the Court that his wife "is an actively practicing, licensed attorney." (Their words.) Counsel knows very well, by reason of a court-ordered affidavit, that Petitioner's wife's income from her practice averages only $75.00 a week. She is 75 years old, has severe osteoporosis (has had four compressed fractures of her vertebrae), and can only read by using magnifying glasses due to advanced macular degeneration. She entered law school at 52 years of age. Not the impression Counsel wanted to leave, no doubt.

Respectively submitted,

Robt. V. Steinhilber

ROBERT V. STEINHILBER
Pro Se

AFFIDAVIT

I declare under penalty of perjury that my statements in the foregoing Reply are true and correct.

Robt. V. Steinhilber

ROBERT V. STEINHILBER

Executed and Acknowledged by Notary on January 2, 2000.

(Seal)

Henry R. Caplan
Commission # CC 878034
Expires Oct. 24, 2003
Bonded Thru
Atlantic Bonding Co., Inc.

Notary Public

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